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ACCOUNTS.

A PRACTICAL TREATISE ON

ACCOUNTS,

MERCANTILE, PARTNERSHIP, SOLICITOR'S, PRIVATE,
STEWARD'S, RECEIVER'S, EXECUTOR'S,
TRUSTEE'S, &c. &c.:

EXHIBITING A VIEW OF THE DISCREPANCIES BETWEEN
THE PRACTICE OF THE LAW AND OF MERCHANTS;
WITH A PLAN
FOR THE AMENDMENT OF THE LAW OF PARTNERSHIP,
BY WHICH SUCH DISCREPANCIES MAY BE
RECONCILED AND PARTNERSHIP
DISPUTES AND ACCOUNTS
ADJUSTED.

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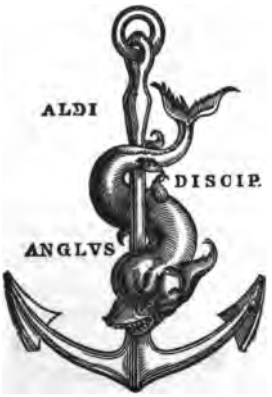

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A

GENERAL SUMMARY

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ACCOUNTS.

CHAPTER I.

In a man's intercourse with the world there is scarcely an every-day duty more important, both to himself and the persons with whom he comes in contact, than is the practice of accounts. Almost every man flatters himself, it is a subject which he either understands, or with which he can without much difficulty become acquainted, if any emergency should render it expedient. Of the mere practical details of the subject, it is easy to acquire a sufficient knowledge for the ordinary routine of business; nor does it require much application to become acquainted with its principles as a science. But there are some points connected with accounts, upon which much misapprehension prevails; and this is chiefly owing to the extraordinary and not very well known fact, that the system of accounts universally adopted among merchants is, in some respects, a very different system from that which prevails in the courts of law and equity; especially upon that most important section of accounts which relates to the concerns of partnership. The mercantile principles and practice of accounts have hitherto been almost as much overlooked by our courts of law and equity, as have

the rules of law and equity been disregarded by accountants. While merchants go on with their accounts in their own way, they experience no difficulties; but the moment it becomes necessary to settle mercantile accounts in any of the courts of law or equity, different rules and principles are applied, and that too by means of a machinery, the inadequacy of which renders an application to the courts an evil, that almost any sacrifice will be encountered to avoid.

The inconvenience arising from these sources has become so pressing, as to have created a necessity for the speedy interference of the legislature. There is, however, some ground for apprehension, that the mischief may be considerably increased by the interference of Parliament, unless the differences between the mercantile and legal principles, upon which accounts are taken, are more generally canvassed and understood.

The object of this work then is, in the first place, to present an outline of the common principles and practice of accounts; not so extensive indeed as to embrace every minute detail, but yet sufficient to enable any person fully to comprehend, and if necessary to investigate, any accounts that may come before him in the way of business; and to adopt such a method as may be necessary to enable him to keep his own accounts, or those he may be called upon to keep or investigate as a trustee, executor, or the like; and to place before mercantile men and others, such general principles and rules of law as most concern them; and, in the second place, to draw attention to the existing difficulties which are so shortly to come under discussion.

I have endeavoured to set before the reader the

remedies which have been recommended by the many eminent men who have turned their attention to the subject; and I have ventured to present a plan which appears to me to obviate almost every difficulty. This plan consists of little more than a proposed recognition by the courts of some of the fundamental principles of the mercantile system; and is so simple, that, it will scarcely disturb the practice either of the courts or of accountants.

It was my original intention to put forth the present work as a treatise upon the PRINCIPLES, LAW, AND PRACTICE of accounts. But the important questions now forcing themselves upon the notice of the public, have induced me to present it in a more popular form, for the consideration of the mercantile world, and consequently to sink as much as possible those legal points and discussions which would be of no importance to them, and to confine the present treatise to such points as are of general interest, or bear particularly upon the matters which are to be discussed in Parliament.

CHAPTER II.

BOOK-KEEPING.

THE system of accounts commonly adopted by merchants and traders, is of very great antiquity. It is called the ITALIAN METHOD, *or Book-keeping by double entry.* Some fragments of antiquity serve to show that it was in use among the Greeks, from whom the Romans appear to have derived it. The remains of it then lingered in Italy, till revived by the commercial cities of that country, whence it became generally adopted throughout Europe. But the system, in its original form, is indeed so natural, that it must have been used by every nation that carried on any great mercantile transactions, and have been almost coeval with commerce. The Italian method is, in fact, the simple form which accounts of any magnitude must eventually take, if kept with accuracy. There are, however, other systems of accounts, to some of which we shall presently have occasion to advert, that contain improvements of considerable merit and ingenuity. But the Italian method is the philosophical and really scientific system; and every other can be only a modification of it: and the principal difference is, that some lines of business are so simple, that it is not necessary to adopt its whole machinery; while others are so com-

plicated, that it is requisite to divide the ordinary parts of the system into portions more minute.

In the common method of teaching book-keeping, systems of accounts are often presented to the student's first attention, which are supposed to exhibit the more simple forms, and thence advances are recommended to what are deemed the more complex mysteries of the Italian method. But, in truth, this is a most laborious process; for the Italian method, if set forth in its simple form, is so perfectly clear and intelligible, that, by the steady attention of a few hours, any one may acquire a thorough comprehension of its principles, and acquire it also in as short a time as he can any of the more simple methods which are recommended. And when a knowledge of its principles are once attained, a single glance will almost suffice for the comprehension of any of the other systems, which are little else than the broken fragments of which the Italian system is the whole. Indeed it is the confusion which is caused in the mind of a student, by having these portions only of a Whole presented to his notice, (in which he must hoard up in his memory rules without reasons,) that invests the subject with the greatest portion of its mystery, and with all its difficulty. I shall, therefore, in the following work, reverse the usual process, and begin with the Italian system in as simple a form as it can be presented to the reader, advancing gradually to an explanation of the subdivision of its parts, where the extent of business requires it; and afterwards pass on to those methods in which a more contracted scale of the transactions requires but a part of the machinery to effect its purposes. This plan gives another advantage—viz.: that as the Italian method is so universally adopted, it ought to be under-

stood by every one; and though a person may, upon some other system, be able to keep his own accounts, yet without a knowledge of the Italian method he will be unable to understand any other accounts that may come before him.

The Italian method of accounts, in its original and simple form, is carried on by means of three principal books—the WASTE or DAY-BOOK, the JOURNAL, and the LEDGER.

The first important object of a merchant is, to reduce into writing every transaction as it occurs; and this is the more important as, in the stress and hurry of business, it is out of the question to attempt to carry nto effect any arrangement or classificati o of the items.

In the Italian method, the book in which each transaction is first registered is called the WASTE-BOOK; which is simply a book in which every transaction, either in buying or selling, or by gift, legacy, accident, or by any other means, is immediately, from time to time as it occurs, entered in chronological order. It commences with an inventory, both in quantity and value, of all the capital or stock, comprising land, ships, mortgages, credits, goods, bills, cash, and all the other property, which belong to the trader, or which in partnership are brought into the firm, as well as all his debts and liabilities whatsoever. The book is then carried on as a register of every transaction, in language as concise as possible; but, at the same time, so comprehensive, that any person unconnected with the business can understand every item. After each entry, a line is commonly drawn across the page; and

at the close of each day is drawn a double line, divided in the middle, to admit the date of the succeeding day. Some accountants carry the sums or money-value of each transaction into columns on the right-hand side of the page. But details of this kind may be regulated by every person, according to his own convenience. It is, however, important to observe, that as the waste-book contains the original entries of every transaction, it is in most cases the only evidence which the courts of law and equity will admit; and that the other books, which are but transcripts of entries from the waste-book, are (except in certain circumstances) inadmissible as evidence. It is for this reason that it is important that the entries in the waste-book should not be written in technical language, as recommended by some accountants; but in such language that each transaction may be understood by every one.

Having accomplished this great step towards a correct system of accounts, the merchant would soon find himself involved in perplexity, and be made sensible that a mere register of his transactions, such as the waste-book exhibits, would be of little service. For, though the waste-book contains a complete account of every transaction, it is manifestly impossible that, from such a book as this, the merchant could know how his business was going on; nor could he, without the greatest difficulty, ascertain at any time what stock was sold, or what remaining in hand: nor could he even deliver a bill to a customer, or know the extent of his liabilities, without hunting through the whole series of his transactions on each occasion, and thus with much inaccuracy, collecting the separate items. To avoid these difficulties, and to facilitate his proceedings,

he would find it absolutely necessary to keep another book, from which he could, from time to time, collect into distinct accounts, and under separate heads, all the transactions belonging to the same customer, and all the several items appertaining to the same kind of goods. Thus, if he dealt in Wine and other merchandise, it would be necessary to have his transactions in Wine all collected into one account, instead of being scattered over the whole waste-book without any arrangement; and if he dealt with John Smith, to have the account of this John Smith collected in a single sheet: yet, as he could not, by reason of the pressure of business, collect and class all these several items, and transfer them to different accounts at the time when they occurred, he would find it necessary to transfer them from the waste-book into this other book from time to time, daily, weekly, or monthly, or as opportunity offered. The book into which the separate items are finally collected and arranged, is called the ledger.*

A merchant, therefore, dealing in a variety of goods, cash, &c., will soon find it necessary to keep a ledger, in which he can enter a separate and exact account of each variety of the articles he deals in, and of the persons with whom he deals. To every separate article or person, therefore, it is necessary for him to appropriate a distinct account: and if he should thus proceed to separate the articles, and make entries of each transaction, from time to time, in their separate

* When it is said that the book into which these accounts are collected is the ledger, it must be understood of the Italian method as it originally stood, for in all very extensive concerns, the results only are transferred into the ledger; and, indeed, the waste-book itself is also divided in several other books, as will be presently explained.

and appropriate accounts, the first thing that must occur to him is—that in every transaction in the ordinary course of business, he parts with some article, and receives for it an equivalent; and whether his transaction be a purchase, sale, or exchange, his stock will be diminished by the article he parts with, and increased by the article he receives in exchange for it; and consequently upon every transaction, some account must be diminished by the deduction from it of the article disposed of, and some other account must be increased by the addition of the articles received in exchange. Thus, if he sells wine for cash, he must take the wine from his wine account, and add the cash received for it to his cash account. If he barters paper for wine, he must deduct from his paper account the quantity he delivers, and add to his wine account the quantity he receives. If he sells cloth to a customer on credit, he must in like manner deduct from his cloth account, and put to the debit of his customer's account the value which he is in due time to receive. In separating his accounts, therefore, the first thing that must occur to the trader is, that for every article disposed of, there must be *two* distinct entries in the ledger, equal in value, one deducting the article delivered from some account, and the other adding the article received for it to some other account.

If, however, in any separate account, as, for instance, the wine account, the merchant were to keep adding to it, upon the same page, every item as he received it, and deducting every item as he disposed of it, such an account would be correct indeed, but it would be extremely inconvenient, and would fail to exhibit the whole of the receipts and deliveries at a single view.

To remedy this inconvenience, it is necessary to enter all the receipts upon one page, which is technically called the *debit* side of the account; and to enter all the deliveries upon the page opposite, which is technically called the *credit* side; thus exhibiting at a single glance all the receipts upon one side, and all the deliveries upon the other: and the quantity of the goods remaining on hand may be ascertained at any time by simply casting or, as it is technically called, *balancing* the account. The *debit* or receiving side is always the *left*-hand page; and the *right*-hand page opposite is always the *credit* or delivery side. And this is uniformly adhered to in all systems and in every account.

Moreover, it is not only necessary to keep a correct account of the *quantity*, but also of the *value* of the goods delivered. This is done by double columns, one for the quantity, and the other for the value, as may be seen by a reference to the separate ledger accounts which are given in the Appendix. Now if this system of double entry is uniformly attended to, this further consequence must follow—that, as two equal entries are made for every transaction on opposite sides, one to the *debit* side of some account, and the other to the *credit* side of some other account at the same time, the sum total of the *debit sides* of the ledger must balance the sum total of the *credit sides*. In fact, the ledger accounts must at all times balance, and if this is not the case, there must be some mistake in the entries.

If the entries were made at once into the ledger from the waste-book, it is clear, that from the inartificial nature of the waste-book, the entry of each item would require considerable thought to be certain that

we carried it to the proper account, and to the proper side of that account, especially in all cases of intricacy; as where for a certain number of pipes of wine delivered we receive, not a single item as a sum of cash equal to its value, but several different items, as a part only in cash, part in other goods, part in a bill of exchange, part by way of satisfaction of an old debt due from us to the customer, and the residue perhaps left standing upon credit as a debt due from the customer to us. And, indeed, with all the care we could employ, we never could be exactly certain that we had entered all the items accurately.

To obviate this difficulty, in the Italian method another book is used, called the JOURNAL, in which every item is entered in a technical form (hereafter explained), by which the operation is methodised and greatly facilitated.

A second difficulty would also arise, if the waste-book and ledger were alone employed. For from neither of these books could we ever know without a great deal of trouble, what is the actual state of our proceedings, or the quantity of goods we had dealt in, by the week or month, which is occasionally of great importance for the regulation of our supplies for the ensuing month. But by a journal kept in a scientific way, both these objects may be attained; and other great benefits of keeping a correct journal will appear as we advance.

A JOURNAL then is a kind of technical transcript of the waste-book, and according to the nature of the transactions, it may be posted every day, every week, or every month, or from time to time as opportunity occurs, or circumstances require.

Every entry in the journal is called a *Journal post;*

and in entering the items from the waste-book to the journal, it must be considered to what accounts they are to be carried. For instance, if the entry in the waste-book should be a purchase for cash of so many butts of sherry, or so many pipes of port, we must recollect whether sherry and port have distinct accounts, or are both included under a general wine account. And again, with respect to the cash, whether it is paid by ourselves in a sum of ready money, or by a draft upon our banker; in each of which cases the journal post would vary. The first object then of the journal is to sort the different items to their several accounts: and for this purpose a technical language is used, which we shall now explain.

As every item must in the ledger be entered in two different accounts, the *receiving account* is in this technical language said to be *debited* with every item it receives, and Debtor to the account from which it receives it; and the expending account is said to be *credited* with, or *Creditor* by, every item delivered out of it. And a journal post is always made in the form of One Account *Dr to* Some other Account. Thus where two pipes of wine are sold for 150*l.* cash, Cash is the receiving account, and Wine is the delivering account. Cash is said to be debited with the sum received, viz. 150*l.*, and Wine is credited with the quantity of wine delivered, viz. two pipes value 150*l.* Cash is therefore said to be debtor to wine in this amount; and the journal post of the transaction is made in the following technical form:

CASH *Dr to* WINE.	
To two pipes of Port, at £75	£150 : 0 : 0

Of which *journal post—Cash Dr to Wine* is called the *entry*, and the particulars are called the *narration*.

Again, where cloth is bartered for wine, the form of the journal entry is WINE *Dr to* CLOTH; for the wine account receives, and the cloth account delivers; and the narration consists of the particulars of the transaction, both in respect of the quantity and value of each article.

Every item is thus entered in the journal; and if the accountant pleases he may enter them chronologically, and exactly in the same order in which they occur in the waste-book. And of this method an example is given in posting the transactions for the first month, in the Appendix. But this posting, item by item, is not often done in the present practice, as by that means the other considerable advantages of a journal would be lost.

The object of thus technically entering the journal posts is this: that the journal entry, WINE *Dr to* CLOTH for instance, directs the accountant in posting the ledger to enter the particulars, without further consideration in the wine account, upon the debit or left-hand page of the ledger; and in the cloth account to the credit or right-hand side of the ledger. And again, where the journal post is CASH *Dr to* WINE, it directs the sum of cash to be carried at once to the

debit, receipt, or left-hand side of the cash account in the ledger, and the wine to the credit or right-hand side of the wine account.

In entering a journal post, the great point to be attended to is simply this—*the account* TO *which the item received passes, is the Debtor to the account* FROM *which its equivalent is taken:* and this is the great and only rule which regulates every journal post.

The entry of the items in this technical form, not only sorts them for posting in the ledger, but saves the accountant a prodigious deal of consideration and perplexity, and at the same time obviates the errors which would be otherwise introduced into the ledger.

But the journal is not merely an instrument for posting the ledger; it discharges other functions far more important, which will appear as we proceed, and will be much more easily comprehended when the reader shall have obtained a complete view of the system.

The only observation we need make at present is, that one great advantage which may be obtained by a well-kept journal is, that if a double money column be ruled in the right-hand margin of the journal, and the money-value of each item of the debits be entered in the inner of the two columns, and of the credits in the outer, this will not only facilitate the entries in the ledger, but if every page of the journal be cast or added up, as there is a double entry for each item, the sum total of the debit columns must be equal to the sum total of the credit columns, which gives an additional and a most important check upon all errors, and it gives also the sum total of all the transactions that have taken place within the month.

The journal, like the waste-book, begins with an entry of all the property of the merchant, of which the different items are entered as SUNDRY ACCOUNTS, or PERSONS *Dr to* STOCK; and all his liabilities are posted as STOCK *Dr to* SUNDRY ACCOUNTS or PERSONS.

The LEDGER is the book in which all the different accounts are sorted; and, in a practical point of view, the ledger is the most important of all the books. It is not uncommon among writers upon accounts, to look upon the ledger as only an index to the journal or other books; and, indeed, there is some force in this observation, where the magnitude of the transactions is such, that several other books are introduced: but the truth is, that these subsidiary books, as they are called, are but branches and component parts of the original ledger or waste-book; and when the division is carried to great minuteness, the skeleton of the ledger that is left (though in itself bulky enough) remains but as a kind of index to the other books, though it contains the summary of them all.

But as this view of the ledger would give a very inadequate idea of its importance, I must here treat of it as it originally stood, and as it still stands in all concerns, whose magnitude does not require such minute subdivisions.

In the ledger, all the items are classified and arranged; and the transactions of the merchant in every kind of merchandise, are sorted into separate accounts, under distinct heads. Thus all transactions in wine are collected together in the wine account; in cloth, in the cloth account; and all his dealings with different persons are collected and arranged in accounts opened

with each person respectively. The ledger then (or in complicated concerns, the ledger, together with its branches) contains all the several accounts of the respective articles in which, and of the respective persons with whom, the trader deals.

In the ledger, an account is opened for every article and for every person. The accounts of the articles are called *real* accounts; and the accounts with persons are called *personal* accounts.

Each account is posted from the journal to the ledger, and it is in general immaterial in what order the different accounts are opened, as the index of the ledger refers individually to each; and as soon as a page is full, the account is carried forward by a proper reference to another page. It is usual, however, to give a certain arrangement to the ledger accounts; and to keep, as much as possible, the foreign accounts together, and the domestic accounts together, and the London accounts together, giving the stock and cash a priority over the others, by which means much labour is dispensed with.

Every ledger account occupies two pages. The left-hand page (as the book lies open), is *always* the D^{r} side, upon which all articles *received* are entered; and the right-hand page is the C^{r} side, on which are entered all articles delivered out or paid.

Every account, whether real or personal, is opened with a proper heading, for the forms of which, see the ledger accounts in the Appendix.

In the *real* accounts, all the articles received must be entered on the debit side; and the *quantities* and *value* of each article received, must be disposed in

separate columns. And as the articles are disposed of, entries must in like manner be made on the credit side, showing the *quantity* and *value* of the goods delivered.

In the *personal* accounts, in like manner, we debit our customers with all the goods received by them on credit with their *quantities* and *value*, and all the cash received by *them* from us in advance, on account, or otherwise: and all the goods they deliver to us upon credit, and all the cash they advance in payment, will come upon the credit side of *their* account.

In posting the ledger from the journal, the accountant must enter every item in the ledger in the separate accounts, and as he does this from the journal, he marks against the journal entry the page of the ledger on which the *first* or D^r entry of the item is made, in a column set apart for that purpose; and when he makes the *second* or C^r entry, he also marks against the journal entry in an adjoining column the page of the ledger in which he makes it, as in the examples in Appendix I. Thus, if Wine D^r to Cash is the entry he is posting from the journal to the ledger, and the wine account occupies p. 6, and the cash account p. 2, the accountant marks against the journal post in the column set apart for that purpose, a 6 when he enters the item to the *wine account* in p. 6 of the ledger, and he marks a 2 in the adjoining column when he enters the item to the cash account in p. 2: so that when both entries are completed, and both the figure columns in the journal filled, the accountant not only knows the pages of the ledger in which the corresponding entries are made, but when he sees the two figure columns thus filled, he is assured the entry has been duly made in both ac-

counts. Against the ledger post is also entered a figure referring to the page of the journal from which the item comes. An examination of the journal and ledger entries in the Appendix I. and II. will render these minute details familiar.

When a merchant commences business, on such a moderate scale as not to require any subsidiary books, he provides himself with a *waste-book*, a *journal*, and a *ledger*.

He opens his waste-book by setting down all that he possesses, all the credits due to him, and likewise all the debts he owes.

He then opens his journal in the technical language of that book by the following entry—SUNDRIES *Dr to* STOCK, under which he enumerates all his property and credits; and he then enters his debts as STOCK *Dr* to SUNDRIES: and having in the journal thus enumerated all the particulars, which he had previously entered in the waste-book, he proceeds to post them in the ledger.

The first account he opens in the ledger is the *Stock Account*,* which is an account of all his property or *Stock*. In this account there is no necessity again to enumerate all the particulars: but the sum total of the merchant's effects and credits is carried to its credit side, and the sum total of his debts to its debit side; and the difference between them is, in fact, his net *capital*. He then opens the Cash account in the ledger, making the Cash account Dr to Stock for the ready money brought in. The Wine account he makes Dr to Stock for the wine brought in; the Cloth account Dr to Stock for the

* See Appendix II.

cloth, &c. If he has funded property, he makes a Funded property account D^r to Stock both for its amount and value; and, in like manner, if he has an estate, or a house, or a ship, he opens a similar account for each, making them all D^rs to the Stock account; and all persons who owe him money are in their respective accounts made D^rs to the Stock for the amount. And on the other hand, with respect to all persons to whom he is indebted, Stock is made D^rs to them; and they are credited with the amount in their separate accounts. When the books have been thus opened, it is evident that double entries have been made in the ledger for every item. The debit side of the Stock account, which contains the merchant's debts, is equal to the sum total of the credit sides of his creditors' accounts; and the credit side of the Stock account, which contains his effects, is equal to sum total of the debit sides of the accounts into which these effects have been distributed: and consequently the sum total of the debit sides of the ledger balance the sum total of the credit sides when the business commences.

As business proceeds, the merchant from time to time receives and disposes of divers articles. Every transaction is entered in the waste-book, passes through the journal, and finds its way into two several accounts in the ledger. This, however, will not have gone on long before the merchant finds the necessity of opening another account in the ledger to represent his Income. He receives, for instance, the rent of a house, viz. 50*l.* in cash—what is to be done with this? This is a clear item of income for which he gives no equivalent. As the cash account receives it, cash must be made

Dr to something, and a corresponding entry must be made somewhere. He finds it necessary, therefore, to open a distinct account to represent his Income or Profits and Losses. And this he does in the ledger under the name of the *Profit and loss* account. He then enters this rent in the waste-book, and passes it into the journal in the form of

Cash Dr. to Profit and loss.

To A. B. for rent of my house in —— Street, 50*l*.

And in the ledger the Cash account is debited with the 50*l*. paid in, and the Profit and loss account is credited by the same amount.

Again, if the merchant receives a legacy,* or interest for money he has lent, or dividends upon his funded property, or commission upon any consignment, these are all items of *income* solely without a corresponding outlay, and find their way into the ledger in like manner as did the rent; the Cash account being debited with the money paid in on these items, and the Profit and loss credited by the like amount.

If instead of cash he should receive a gift of so much wine, his Wine account would be debited with the receipt of it, and his Profit and loss credited with its value.

Upon the other hand, if he pays in cash the rent of the premises upon which his business is carried on, as this is a deduction from his gross income, the Profit and loss or income account must be debited with this, and the Cash credited to the like amount. It will pass through the journal in the form of

* A legacy may be put to the stock account, if the merchant chooses to regard it as an item of capital instead of income; and this is often done, and perhaps more advisedly, as Cash Dr to Stock.

Profit and Loss Dr to Cash.
To Rent of Premises in —— Street.

In like manner, clerks' salaries, interest of money borrowed, bad debts, and all losses that may occur, will find their way to the debit side of the profit and loss account, as well as charges upon merchandise, such as insurances, postages, &c., which are entered under the name of Charges or Charges-merchandise. All money likewise (if any) drawn by the trader for his own private expenses, will make its appearance upon the same side of the profit and loss account under the name of Private expenses.

But it is not simply articles of, as it were, accidental income, like the above, that come into this Profit and loss or income account, but the profits and losses of all the transactions are to be brought into the same account. For instance, when the merchant disposes of all the articles in any real account, if they have been sold for more than they cost, the difference is the gross profit arising therefrom, and it will come out upon the credit side of that account: but if they have been sold for less than they cost, then the difference is the loss sustained, and it will come out upon the Dr side. Whenever therefore it happens that a real account becomes exhausted by the sale of all the articles, there is no necessity for the merchant to trouble himself any further with an account of its items; but only to take account of the balance, and to convey it to the proper side of the Profit and loss account in some manner or other so as not to disturb the equilibrium of the ledger. The *profit* of an exhausted account* comes out upon

* See the Cloth account, in the Appendix II.

the credit side, and as this is an item of *income*, it must be carried to the credit side of the profit and loss account also, and this is done without disturbing the equilibrium of the ledger by an operation called *balancing* the account.

If we were to add up the two sides of an account, and set the lesser under the greater, and subtract it, we should obtain the difference, which would stand upon its proper side as the balance of the account. But this, though the most natural method of ascertaining the balance, is not exactly the method by which an account is balanced or closed. The difference ascertained by deducting the lesser from the greater is not left in the form it would so receive; because that form would leave the account in the shape of a running account. But the difference or balance (so ascertained) is always inserted at the foot of the deficient side; and then, when the account is cast, both sides come out exactly equal: and the account being thus closed and balanced in form, the balance must be inserted again upon its proper side. If an account is balanced simply for the purpose of closing it and opening a new account with the difference, this difference, after the account is balanced, is inserted again upon its proper side immediately under the old account. And the operation consists only of an insertion of the balance on both sides of the account, which of course makes no disturbance in the equilibrium of the ledger. But after the old account is balanced, there is evidently no necessity to insert the balance again immediately under the old account, but it may be carried into some or any other account that may be convenient, provided only it is entered upon the proper side of the ledger, so that

its equilibrium be not disturbed. In an exhausted account which has been profitable, the gain comes out upon the credit side. We therefore balance the account by entering the sum once upon the debit side of the account, so as to balance and close that old account; and we enter it again upon the credit side of the Profit and loss account, whereby the old account is closed, the gain is carried to the credit of the Profit and loss account as an item of income, while the equilibrium of the ledger is preserved. The Cloth account exhibits an account closing with a profit, which is carried to the credit of the Profit and loss account.

But if a real account closes with a loss, the balance must in a similar manner be carried to the debit of the Profit and loss account, as may be seen in the Paper account.

Many of the real accounts of a merchant, however, are never exhausted, but are receiving a constant accession of new articles as the old ones are delivered out. They nevertheless yield their profits and losses, which are only ascertained upon what is called a *Stock-taking*, or *Rest*, which operation we shall presently explain. It may be sufficient here to mention, that at the stock-taking the profits and losses of these unclosed accounts are carried into the Profit and loss account in the same manner as are the profits and losses of the closed accounts: and so are all the bad debts and matters which turn up upon the stock-taking investigation.

Now as all the profits of the merchant find their way to the credit side of the Profit and loss account, that side must exhibit his *gross* income. And as all the rents, salaries, losses, and outgoings, find their way to the debit side of that account, that side exhibits his ne-

cessary charges and expenses, and his losses incurred in respect of trade: and the difference between these sides (provided the merchant draws nothing for his private expenses in the mean time) will exhibit his *net* income. If, however, the debit side exceeds the credit side, he has been a loser by his business.

It is customary with every merchant once or twice a year to make what is called a *Rest*, when he balances his books, and examines all his stock in hand, in order to ascertain the amount of his stock and the profits and losses of his business. To this operation he usually devotes that time of the year when business is most flat, and when most of the personal accounts are made up, and real accounts exhausted by the sale of the articles in which he deals. And unless he performs this operation from time to time, he may be going on apparently in prosperity, while in reality he may be fast verging to insolvency.

In making a rest and stock-taking, he has two objects in view,—1st. To ascertain the amount of his stock or property; and, 2dly, To ascertain his profits or losses during the past year.

To effect these objects it is necessary for him to balance his books, and to ascertain also by actual inspection, whether the property he has in hand really is what according to the books it ought to be; or whether he has suffered in any manner by unknown losses, damage, or depredation.

To ascertain what property he actually has in hand, he must accurately inspect all the articles of his stock, and fix an estimated value upon them according to the market prices at which he would at that moment be content to purchase them; or, if they are articles of his

own manufacture, at the lowest price at which he is content to dispose of them.

Having effected this stock-taking, and reduced the results into an inventory, he may proceed to balance the ledger.

In this operation, it has been observed, he has two objects in view: 1st. To ascertain the amount of his stock or property; and, 2dly, To ascertain his profits and losses. His property is distributed over all his ledger accounts, as well as his profits and losses. Some of his profits and losses have been from time to time flowing into his Profit and loss account, and it is now his object to collect there all the rest of his profits and losses; which he may do upon balancing such of his ledger accounts as contain items of profit and loss. But to collect the amount of his present property, he opens another account, which is called the *Balance account.* And as he balances his ledger accounts, he collects the balances of property or liability which they exhibit into this Balance account.

He balances, therefore, all his real and personal accounts, one after another. The amount of property which any of them exhibits he carries down to the debit of his Balance account, and the amount of liability which any of them exhibits he carries to the credit of the Balance account. And the profits and losses which these accounts exhibit, in like manner he carries down to the Profit and loss account. So that when this operation is completed, these two accounts in fact represent all the real and personal accounts in the ledger; for the real and personal accounts being balanced, need be no more regarded, as their results are exhibited in

the balances carried down into the Balance and Profit and loss accounts.

It may be here observed, that these balances and profits and losses should at a rest be collected upon two separate loose sheets of paper, and the balancing operations be performed in pencil, and not be reduced into writing and inserted, till all errors have been detected and rectified.

The personal accounts, as well as the cash, which is a real account, are easily adjusted by simply balancing them one after another, and carrying their balances into the Balance account. But the real accounts are not so easily disposed of.

To balance a real account, two distinct operations are necessary: the first has respect to the quantity and value of the stock in it, and the other to the profit and loss that has accrued upon it.

In those real accounts which have become exhausted by a sale of all the articles, only one of these operations is requisite; for as all the articles have been already disposed of, there are none to be enumerated among the stock in hand. It is only necessary, therefore, in these exhausted accounts, to close them and ascertain the Profit or loss which has accrued, and carry it into the Profit and loss account.

In closing these exhausted accounts, there is however another matter to be attended to, viz.: that the actual *quantity* of goods that goes out is very frequently not exactly of the same amount as that which came in. It is often *less* by reason of loss or damage; but it is not unfrequently *more* by reason of superabundant measure purposely allowed by the wholesale dealer, or by

reason of mistake. some The superabundant quantity will come out upon the *credit* side, and is called *Outcome*, if it only arises from superabundant measure; and it is entered under that name upon the Dr side to balance the *quantity* of the goods. It is regarded as an incident of trade, and in an exhausted account no further notice need be taken of it, as its value for which it sold will have passed down into the profit and loss account with the profit upon the commodity. If, however, it arises from error, and is to be refunded, it must be carried forward to the personal account of the wholesale dealer.

If, on the other hand, there is a deficiency of quantity arising as an accident of trade, this will come out upon the Dr side, and is called *Inlake*, lackage, or leakage; or if it is unaccountably lost, it is entered as *amissing*; or if by waste, damage, or depredation, it is entered as such, and will find its way into the Profit and loss account to the Dr side as loss. If, however, the amissing quantity is by a mistake of the wholesale dealer, it must be carried down accordingly and debited to his account. An example of Outcome may be observed in the Cloth account, and of Inlake in the Paper account, in the Appendix II.

Having balanced the *cash* and *personal* and *exhausted real* accounts, the next operation is to balance the remaining real accounts which are not exhausted. And to do this, attention must be directed to two points; first, the quantity of goods remaining on hand, and, secondly, the profits or losses which have accrued; for though these accounts are not closed, profits or losses must have nevertheless accrued.

To balance, therefore, an *unexhausted real* account,

the merchant first of all casts the quantities received (see the Wine account in Appendix II.), which are upon the debit side, and then he casts the quantities disposed of, which are upon the credit side, and the difference gives the quantity which appears on hand according to the books. He then examines the inventory of his stock, that he has previously taken, to ascertain whether he really has what it appears he ought to have. If not, he must insert the difference as waste, damage inlake, or the like, before he finally balances the account. And having thus corrected the quantity in the books to the actual state of the case, he puts upon the remaining stock in hand an estimated money value, according to the then market price; and so he ascertains the quantity and value of the articles on hand. This quantity and value he places upon the credit side, under the articles which have been disposed of; and by then casting the credit side, the *quantities* on both sides of course balance; but in the money column of that (the credit) side, he obtains the sum for which the goods disposed of have been actually sold, *plus* the sum at which the residue are estimated. He then balances the debit side as to the *value*, and this balance is the *profit*; for it is simply equal to the sum for which the goods have sold *plus* the value of the goods in hand, *minus* the prime cost of the whole lot. Upon thus balancing the account, the *quantity and value* are carried to the Balance account, and the *profit* or loss thus ascertained to the Profit and loss account; and so the real account is closed.

Having thus balanced and closed all the real and personal accounts of the ledger, and collected their

results into the Balance and Profit and loss accounts, these two accounts represent the whole ledger except the Stock account, which it will be recollected at the opening of the ledger was credited with all the trader's property, and debited with all his liabilities, and so left.

It has been repeated over and over again, that as two entries exactly equal in value are made for every transaction, the ledger must always balance. And now, since all the ledger accounts are collected into these three, viz., the *stock*, the *balance*, and the *profit and loss* accounts, these three accounts must balance one another. Let us then examine whether these three accounts do really balance upon any scientific principle.

The STOCK ACCOUNT, on its *credit* side, contains all the trader's stock at the commencement of his trading, and all his liabilities on its debit side. Deducting one from the other, the *Stock account* therefore contains upon its *credit* side the property of the merchant *when he commenced* business.

The BALANCE ACCOUNT, on the other hand, upon its *debit* side, contains the quantities and value of all his property, and of all the debts due to him at the time the Rest is made; and upon its credit side it contains all the debts or liabilities he owes. Deducting one from the other, the *Balance account*, therefore, contains upon its *debit* side the property of the merchant *when he closes* business upon this occasion.

The PROFIT AND LOSS account, on its credit side, contains every item of the merchant's gain, and upon its debit every item of his loss and expenditure, and therefore, deducting one from the other, the net profits he

has gained during his trading appear upon its *credit* side, or *vice versâ,* if a loss.

Now, it is evident that the net amount of the stock at the conclusion must be equal to the net amount of the stock at the commencement, together with the profits made. Or, in other words, if to the net amount of the stock at the commencement we add the intermediate profits which have accrued, the result will be exactly equal to the net amount of the stock at the conclusion; that is, the net credit of the *Stock account,* + the net credit of the *Profit and loss* account, = the net credit of the *Balance account;* and the ledger still balances: and if this is not the case there must be some mistake, which must be hunted out before the Profit and loss and Balance accounts are finally adjusted. When the errors have been all detected, the accounts must be closed, and the Ledger balanced in the following manner. The *Profit and loss* account is first balanced, the balance of it, *i. e.* the net profit, is carried to the Stock account upon the credit side, and that closes the Profit and loss account. The *Balance account* is then closed, and the balance of it, *i. e.* the net stock at the conclusion, is entered as D^r to stock, and thence carried to the debit of the Stock account; and that operation must also close and balance the *Stock account;* which completes the balance of the Ledger.

The journal and sometimes the waste-book are brought into conformity with the ledger, by entering in them, in the ordinary way, the profits and losses which are found upon taking the balances, and passing them through the journal; so that each book contains a complete register of all the transactions: the sum carried over from the Profit and loss account to the Stock account, is also

posted as the net gain, as well as the sum carried from the Balance to the Stock account.

Having balanced the books, the new accounts are opened in the same way by an enumeration of the different articles of stock in the waste-book and journal. But this fresh enumeration is not necessary if no alterations are made in the amount, by the withdrawal or addition of capital, or by alteration in the pages of the ledger.

It is not necessary for me in a treatise like the present, not intended for instruction in the minute details of practical accounts, to enter into the various ways resorted to, to detect an error, which is often a most laborious operation, requiring a complete search through the whole of the books, perhaps again and again.

The most useful of the ways of detecting or preventing error, is frequently, viz. once a month, when the ledger is posted, to make what is called *a trial balance;* which is merely balancing the ledger without taking the stock. This operation is simply writing down all the heads of accounts one under another, with their balances (the D^r on the left, and the C^r on the right); and if the ledger do not balance, the error should be hunted up at once, while the entries are all fresh in the mind, and only a month's work is to be reviewed, instead of a twelvemonth's. A trial balance is given in the following accounts in Appendix I.

To the subject of partnership we have devoted an entire chapter; it is therefore only necessary for me simply to state the method in which partnership accounts are kept. They may be kept at once in the books, and the division there made, if the parties think

proper so to do, or they may be kept, as is commonly the case, in a Private ledger. Partners never are in account with each other, but always with the *Firm*, and they are made C^rs of the firm for all they bring in, and D^rs to it for all they draw out. Each partner, therefore, has an account opened with the firm. If the partnership accounts are kept in the general books, then the Stock must be made D^r to them for all that it receives of them, and C^r for all they draw out; and they are dealt with precisely as any other D^rs or C^rs of the firm. They are C^rs to the firm for the profits which are divided in proper proportions, and carried to their respective credits; and they are D^rs to it for all its losses, which they must make up. The more usual way, however, is never to make the division in the general books, and to take no notice of the partners in them, except to debit them with all the sums they draw out; and if they bring in any thing extra, or make any repayment, to credit them with such items, but not to notice their claim upon the capital in the general books. Their accounts, however, in that case, are not carried to the balance sheet, so as to leave them D^rs to the firm for the new account; but either to the Profit or loss account, or to the Stock account, and so to close and balance the books.

The private ledger contains a *Capital account*, which represents the *firm*, and this is made D^r to the partners for the capital, and for the profits, and C^r for all the sums they have drawn out. It is followed by the private account of each partner, who is credited with his capital, and with the proportion of the profits ascertained in the general books, and debited with the sums he has drawn upon the firm: and the balance gives the

sum due to him from the firm. Of this he may draw the profit then due, and the then balance is carried down as the capital he has remaining, which is commonly kept as it was at first. It may, however, be altered by the consent of the partners; and they may draw out, or leave in, as much as they think proper. For a form of a Private Ledger, see Appendix III.

CHAPTER III.

ITALIAN METHOD—PRESENT PRACTICE.

THE preceding chapter contains an account of the Italian method, or the method by double entry in its original form; which is, indeed, so simple, that it may, without much difficulty, be understood by any one. It is the natural form which accounts must take, if accurately kept; and it may be applied to any business whatsoever.

It is not, however, exactly in this form that accounts are always or usually kept; for where transactions are large and complicated, it is impossible, in the course of a day, to enter in a single waste-book all the transactions that occur, as several clerks must be employed to write at the same time. Again, if all accounts were kept fully, and at large, in the ledger, a book of the greatest size would be filled in a week. This renders it imperative upon the merchant to adopt subdivisions of these books, and to introduce a variety of subsidiary books, without which, no concern of any extent could be conducted. Again, in other lines of business, the dealings are so simple, that the journal, and even the waste-book, may be dispensed with; and perhaps the whole machinery may be reduced simply to a cash-book.

We shall first follow the system into that more complicated state, which may be said to constitute the present practice: and it may be done conveniently from this point without causing any confusion; as the previous accounts, given for the elucidation of the old Italian method, may advantageously be carried on, so as to exhibit the present practice; and having done this, so as to give the reader the fullest comprehension of the subject in all its parts, we may then return with greater advantage to those systems of accounts which are, in fact, but fragments of this extended practice.

Where the extent of the transactions requires subsidiary books, not only the waste-book is divided, but several accounts are also detached from the ledger; and several of the ledger accounts are subdivided also. And it is a consequence of this breaking up of the waste-book and ledger into subsidiary books, that the journal becomes the only *complete* record, and is, in fact, the great chronicle of business, containing every thing within itself. And, in this case, the form of the journal is changed from a record of the transactions as they successively occur from day to day, to a monthly chronicle; in which, for the convenience of posting from several distinct books, the contents of each book are all journalized together, and thus become sorted in the journal under several distinct heads, as may be seen in the journal for February and March, Appendix I. The heads under which the journal entries are then made, are commonly—

Cash Dr to Sundries.—Sundries Dr to Cash.
Bills receivable Dr to Sundries.—Sundries Dr to Bills payable.
Merchandise Dr to Sundries.—Sundries Dr to Merchandise.
Sundries Dr to Sundries.

Under which heads every item may be sorted; or if any thing cannot be conveniently placed under these heads, a separate head may be allotted to it, as is constantly the case with consignments, or the like.

The journal is posted under these items, because the waste-book is cut up into corresponding subsidiary books, which we shall now explain.

When the waste-book is divided, it is divided in such a manner as to simplify the transactions by allotting different books to different departments, or to different clerks. The waste-book is usually cut up into three principal subsidiary books: the *cash-book*, the *bill-book*, and the *day-book*, and these are also subdivided.

The CASH-BOOK includes all the cash transactions. It is kept in ledger fashion, with the receipts upon the debit, and payments upon the credit side; and as its results or sum totals only are transferred into the ledger, it is also a substitute for the ledger cash account, as it exhibits all the items, which, in the simple form of the Italian method, should be individually set forth in the ledger itself.

In extensive concerns the cash-book is often ruled in two columns, the outer column of which contains monies received and paid in actual cash to or by the merchant; and the inner column contains the receipts and payments made at the bankers of the merchant. There is sometimes even a third column, when the merchant chooses, as is frequently the case, to have an account with the Bank of England, as well as with some private

banker; but of this we shall take no further notice now. The inner column of the monies kept at the bankers must, of course, exhibit a counterpart of the banker's Pass-book as to the sums. And it is of great importance, especially in partnership, that every sum received on account of the business should be scrupulously paid into the bank of the firm; and that every payment (except petty disbursements) made on account of the firm, as well as every sum drawn by any of the partners for their own private use, should be made by a draft upon the bank. And where it is possible, it tends greatly to the regularity of business that, for petty disbursements, checks should be given in even sums to the clerks employed for that purpose, to be accounted for by them in the petty disbursement book. When cash is thus always passed through a banker's, the pass-book exhibits the exact results* of the cash-book, and forms as it were another cash-book of the firm. It is a continual check upon any errors: it exhibits the whole cash transactions of the firm; and in case of any dispute, or loss, or accident by fire, or otherwise, there is always extrinsic evidence of each transaction, or, at least, the notes can be identified or traced. All which are oftentimes matters of the most incalculable value and importance to a trader.

For petty disbursements, a petty cash-book is kept, which is generally intrusted to a separate clerk. It contains, simply in the cash-book form, the sums intrusted to him for that purpose, 10*l.* or 5*l.* at a time on

* Not precisely sum for sum, for two or three sums paid in together appear in the pass-book in one sum only, equal to the whole: but in the banker's waste-book they will be found with all particulars.

its debit side, and the expenditure on its credit side. From the petty cash-book, the petty expenditure of the month is carried forward to the general cash-book, and the items separated and charged to the different accounts. For the Cash-book, see Appendix IV., and for the Petty cash-book, Appendix V.

The BILL-BOOK is another book in use among traders, and constitutes the second division of the waste-book. The bill-book is divided into two parts: one of which is devoted to Bills-receivable, and the other to Bills-payable. There is no necessity to enter into any explanation of it, as an inspection of the forms in Appendix VI. will be all-sufficient.

Bills are an instrument of exchange, perhaps more important, in a mercantile point of view, than cash itself. There can scarcely arise any difficulty in journalizing bills either receivable or payable. They fall under precisely the same rules as every other kind of merchandise. The Bills-receivable account is D^{r} (for every Bill-receivable the merchant receives) to whatever account he abstracts its equivalent from, and *vice versâ*; though cash is in general the only item which is D^{r} to bills-receivable, unless a bill-receivable is dishonoured, when the party becomes D^{r} to the Bills-receivable for the amount, and to Charges for the expenses are incurred. If it is arranged to renew a bill, Bills-receivable become again D^{r} to him for the amount, and if so agreed, interest and the expenses may be included in the new bill.

Bills-payable are the bills we give or suffer to be drawn on us, in consideration of the merchandise we receive, and they are usually paid in cash, when they

become due. When given, the Party drawing it is made D^r to Bills-payable; and when due, Bills-payable are usually D^rs to Cash. There are times, however, of distress, in which a trader may not have the cash to meet his bill-payable, and the bills must, by favour of the holder, be renewed. If the holder then renews the bill, say for 500*l.*, the transaction has two parts: the trader gives to the holder a new bill for the amount, viz. 500*l.*, together with interest and expenses of noting, &c., say 5*l.* 14*s.*, viz. 5*l.* for interest, and 14*s.* for charges, viz. 505*l.* 14*s.*; and the holder then returns to the trader the dishonoured bill. The transaction, therefore, in the journal will appear as the Holder D^r to Bills-payable, for 505*l.* 14*s.*; and Sundries become D^r to the Holder to the same amount, viz. Bills-payable for the old bill, for 500*l.*, Interest for 5*l.* and Charges for 14*s.*

Where, however, such an item as this arises, whether it be by distressing circumstances of loss or disappointment, or if it arises in the startling shape of dabbling in accommodation bills, it becomes necessary for the trader to look more sharply to his accounts, and take them entirely into his own hands, not to be neglected, as is usually the case, but to be kept more accurately and adjusted more scrupulously, as a preservative against approaching insolvency, and (which is a consideration of almost as much importance) as a protection in case of actual stoppage of payment. For where the accounts of an embarrassed trader are well kept, the direct inference is *misfortune*, instead of *neglect or fraud*; and it is very rare in such a case that an insolvent trader may not make an advantageous composition, and go on again, where his own care, in keeping his accounts truly, has obviated the necessity of calling

in the powers of the Courts of Bankruptcy, and his creditors are relieved from the vexation of sacrificing the greater portion of the wreck of his property to remedy his negligence in a matter which it was his first duty to perform. The keeping his accounts more scrupulously exact in such circumstances is not only a provision against the evil day, but enables him to turn to advantage every chance of rallying.

When the cash and bill books are detached from the waste-book, the remnant is often called the DAY-BOOK, and it contains the goods which come in and are delivered out, and such other matters as are not contained in the cash and bill-books.

Whenever goods come in or are delivered out, they are always accompanied by an invoice, which is simply a memorandum containing an exact account of the goods and their prices, and stating the persons from whom they come, and to whom they are delivered.

The invoices are the original documents for all incoming goods, and are frequently too long to be copied at length into the day-book. This introduces another book, called the INVOICE-BOOK-INWARD, or Bought-book. In all concerns the invoices are carefully preserved, and the invoice-inward-book is commonly composed only of a book of blank paper, in which the invoices are carefully posted as they come in. This, as a subdivision of the day-book, is, of course, only a branch of the original waste-book. Copies of the invoices, if they are not too long, or if so, abstracts of them, as given in Appendix VII., are entered in the day-book, and passed through the journal in the usual form.

The INVOICE-BOOK-OUTWARD, or Book of exports, is

another subdivision of the day-book. The original invoices are sent off with the goods sent out, but exact copies of them are kept in the invoice-outward-book, and if too long, abstracts of them are entered in the day-book, comprising the particulars under the names of goods, charges, commission, insurance, and the like, as per invoice.

For an invoice-book-inward, see Appendix VIII., and for invoice-book-outward, see Appendix IX.

Some persons make it a rule to enter the invoices at length, both inwards and outwards, denominating the books the Bought-book and the Sold-book, keeping no day-book, but journalizing at once from these two books; and this, in certain lines of business, is not a disadvantageous method.

A SALES-BOOK, however, is properly a very different thing from the invoice-outward-book, and contains an account of those sales which are made upon commission by an agent, consignee, or the like; and in it the whole consignment is kept together till it is sold; and the whole account, both D^r and C^r, is kept by itself, and the results only passed into the day-book: whereas, in the invoice-outward-book, the trader comprises in one invoice, perhaps, many different kinds of goods of his own, and also of other persons, for whom he acts as agent. The consignee has no present interest in the goods contained in his sales-book; he has only to sell them, pay the charges, and deduct them and his own commission, and return to the consignor the net proceeds, with the account.—For an example of a sales-book, see Appendix X.

Such are the usual divisions of the waste-book in the present practice of those extensive concerns which

flourish in this kingdom; and without this minute subdivision, business could not be carried on. There is no necessity to pass all the items of these subsidiary books through a waste-book, which is thus laid aside, or rather divided into these distinct branches. The cash and petty cash books, as well as the pass-book of the banker, receive all the cash accounts. The bill-book receives the bills receivable and payable. The day-book is the remnant of the waste-book; but from this also are detached the invoice-inward for all incoming goods, the invoice-outward for all outgoing goods, and the sales-book for all consignments. There is sometimes also added another, called the Adventure-book, where the merchant is in the habit of embarking in detached adventures. This is similar to a sales-book, as in it each adventure is kept apart. Such are the subdivisions of the waste-book, which, in fact, supersede it; for it would be absurd to re-enter all these matters in a waste-book before they pass into the journal, as a waste-book so composed would not contain a single original entry or document. According to the present practice, the subsidiary branches of the waste-book contain all the original entries, and the journal is then the great chronicle of the business.

The *ledger*, in extensive concerns, suffers the same fate as the waste-book: not only are subsidiary books detached from it, but some of its accounts are also broken up.

All profits and losses ultimately find their way into the Profit and loss account. But in extensive practice, the Profit and loss account is always broken up into several subsidiary accounts. Commission, Insurance,

and Debentures, are universally carried into separate accounts appropriated to them, and not unfrequently into distinct subsidiary books. Interest, again, has always a separate account; and to the credit of this are usually carried all interest and discounts we receive, and to its debit all the interest and discounts we pay or allow; but they have sometimes separate accounts. Rents and taxes, also Charges-merchandise, Bad debts, Clerks' salaries, and others, are detached according to the convenience of the merchant; and for money drawn by the merchant for his private use, it is the most advantageous method to open an account in the book, headed Private Account, which in partnership is indispensable. When this subdivision takes place, it is evident there is no necessity in these particular accounts to introduce the items, as the account itself sufficiently explains its contents. All these branch accounts of the profits and losses must, of course, be carried ultimately to the Profit and loss account.

In any extensive concern, especially where many items are dealt in, it is impossible to carry into the ledger the full account of every customer, as, in such case, the ledger would soon be filled; and the introduction of these large accounts would render the balancing the ledger almost an impossibility. To obviate this, all the full accounts of the customer are detached from the ledger, and the results only are introduced, with the usual reference to the journal; from whence they are collected in the ACCOUNT-CURRENT-BOOK. The account-current-book then contains all the accounts of customers, and is a transcript of the bills sent out to each.

The ledger is thus relieved of all the items of the personal accounts of the Dr to the business. Of the Cr of the concern, there is no necessity to enter the items fully in the ledger, as they send in their bills; which, if the balances do not agree with his own, the merchant can check by the journal and invoices.

Another subsidiary book of the ledger is, the WAREHOUSE-LEDGER, or *Stock-book*, as it is sometimes called, in which are contained all the real accounts of the articles in which a merchant continually deals. This also, according to circumstances, may be broken up. Thus, the wine may be kept in what is called a Wine-book, and only the monthly purchases and sales carried into the ledger, with their respective values. Recourse may be had to the stock-book for any kind of goods; and the values may be affixed as well as the quantities; for in that case the stock-book contains the real account of the goods complete. An example is given in Appendix XI.

The result of detaching these accounts from the ledger is, that the ledger is at once relieved from the bulk of all the real and personal accounts, and is so far diminished as to become little more than an index to the journal and the other books. And for completely rendering it so, and facilitating the balancing of it, it is usual to make all the entries as concise as possible; such as simply, To Cash, By Sundries, or the like; and, indeed, this is by some accountants carried to such a length, that they lay it down as a rule that a ledger post should never exceed a line. To complete this form of the ledger, the items of the balance account also are seldom entered in the ledger, but only in the

journal, and the balance itself only carried into the ledger. But there is no necessity thus to reduce the ledger, though it certainly adds to the business-like appearance of the book; and in concerns not very extensive, it is much more advantageous to insert in it as much as it will bear.

It is unnecessary to make any observations upon the many other books which different lines of business require. Letter-books, Order-books, and a variety of others, sufficiently explain themselves.

In the accounts of the Appendix it must be observed, that the merchant in the month of January proceeds in the original form of the Italian method. He closes the Paper and Cloth account at the close of that month, and gives up trading in them, reserving only one article of trade. In the months of February and March he becomes more of a general merchant, and brings his books into conformity with the present practice.

CHAPTER IV.

SINGLE ENTRY.

HAVING in the first of the foregoing chapters discussed the scientific principles and methods of accounts, and, in the second, the present practice upon the most extended scale, we shall in the present chapter take a survey of those accounts which are of a more limited nature, and which consequently do not require the whole machinery of the Italian method. The method by which these accounts are kept is usually known as *Book-keeping* by *Single Entry.*

With respect to the meaning of the term book-keeping by single entry, there is some difference of opinion, not only among traders, but even among accountants. Some maintain that if the journal is dispensed with, and the entries made direct from the waste-book or subsidiary books to the ledger, that this is the method by single entry, because there is only one posting, and the intermediate posting of the journal is omitted: while others maintain that the term refers to the double entries in the ledger, which the Italian method requires for each transaction; and that any method of book-keeping that dispenses with one of these two ledger entries, is book-keeping by single entry; and this indeed is the real meaning of the term.

There are many persons who conceive that book-keeping by single entry is something distinct, and even preferable, to the Italian method of double entry, as being more simple. We shall, therefore, point out the distinctions, and how far and to what kind of accounts the method of single entry can be applied.

It may, in the first place, be inquired—since every transaction must consist of a *quid pro quo*, since something must be given for every receipt, how is it possible to dispense with one of the two ledger entries for each transaction? And to this inquiry we may answer, that in those lines of business where there are no real accounts except the cash account, such as the accounts of a professional man, or any one who receives cash for services performed, a system of single entry may be applied; inasmuch as in cash transactions he may carry the cash he receives to his cash account, but he has no account from which he can deduct its equivalent, which may be simply a production of his intellect, an attendance on a client, a tune on a violin, or a menial labour of his hands. All the accounts of these may be legitimately kept by single entry; but in all instances, we believe, the system of double entry may be more judiciously adopted; at all events, we are sure no person will fully understand the bearings of a system of accounts by single entry, unless he is well acquainted with the Italian method.

There are also other lines of business in which accounts may be kept by single entry, and these are retail concerns, such as a chemist or haberdasher, and other concerns, such as a dealer in marine stores, or even a general merchant, whose business is of a nature similar to a retail concern; in all which lines of business, though

the trader deals in articles of real account, yet those real accounts would be so numerous, and the items so innumerable, that it would be hopeless to attempt to keep any account of them; and, consequently, all the real accounts are dispensed with. The method of single entry may be also used in common lines of business, in which the trader deals only in a single article, such as a shoemaker, a tailor, or the like.

It is possible, but barely within the limits of possibility, for a retail trader to keep an account of all the items of the stock he deals in, by means of a stock-book or warehouse-ledger, as described in Appendix XI.; but the trouble he would take to effect it could never be repaid. And what would be accomplished by it? It might detect petty depredations when he came to the end of his stock of any article; and if it did, he would scarcely ever be able to fix the depredation upon any one, and it is never worth his while. He therefore dismisses at once all the real accounts, except the cash; and this is the great difference between single and double entry. It is not that the method of single entry is a more scientific or accurate, or even a more simple system than the Italian method; for its simplicity is merely owing to the omission of the real accounts, only a part of the machinery being requisite. The system is defective; but it is in many instances convenient, and answers the purpose as well as the more accurate system of the double entry.

If from a perfect system of accounts we strike out all the real accounts, we shall have a complete system of book-keeping by single entry, so far as an imperfect system may be called complete. But if we thus strike out the real accounts, what shall we have left? and

what can we devise to supply the defects? By omitting the real accounts, we may evidently dispense with the journal, as its machinery for sorting the items is no longer requisite; and we shall be reduced to the ledger and waste-book, and, in large concerns, to the ledger and subsidiary books.

The system of single entry may be adopted with advantage in concerns of consequence, in which the real accounts cannot be distinctly kept, and a great deal more may be effected by it than at first sight appears probable. We will therefore examine what we omit when we use the method of single entry and what we retain. We omit the journal, for its machinery is unnecessary to sort the items. But in doing this, we lose the great chronicle of the business, and consequently must be more exact in the entries in the subsidiary books and ledger, if we would obtain a balance. With respect to the stock-book, it may be also dismissed, except upon a general stock-taking.*

The trader then will retain only his ledger, cash-book, bill-book, and day-book. The day-book may be divided into the two invoice-books, one containing all his purchases, and the other all his sales: but if he prefer to keep them in a single day-book, he should keep that day-book as a book for goods or *merchandise* alone, entering all the purchases upon

* In some concerns, however, whose accounts are kept by single entry, it is retained; and regular entries of all goods sold are made in it; but by the retention of it, all the trouble of entering in it the quantities sold is retained also; and if the *quantities* of goods sold are to be entered in the stock-book, the *values* also may just as well be entered, for it will take no additional trouble to do this; and if this be done, the real accounts are kept; and all the advantages of double entry may as well be retained as the trouble of it. All such concerns ought to be kept by double entry.

the debit side, and all the sales upon the credit side. He will open in his ledger a Stock account, and all the Personal accounts, as well as the Profit and loss account and its branches; and he will then regularly post his cash-book, his bill-book, and his day (or invoice) books into his ledger, by single entry neglecting the real accounts.

The omission of the real accounts will leave the ledger in such a state, that apparently no balance can be made; and, indeed, no accurate balance can be made; but, nevertheless, a sound approximation may be come to: for though the trader has neglected to post his real accounts, he has in his day-book, or invoice-books, an account of all the goods he has bought and sold; and by means of these, he may accomplish a balance. By taking his stock, he will ascertain the amount he actually has in hand, though he cannot ascertain whether it is what he ought to have in hand. Upon the stock in hand, therefore, he puts a value; and if he add this to the value of the goods he has sold, which appears at the conclusion of the credit side of the day-book, and then balance this account against the goods he has bought, the difference will be the profit on his merchandise. But the truth is, this is neither more nor less than a substitute for the operation described in page 28, where the balancing of a real account is set forth. This operation gives the profit or loss upon the *whole* merchandise at once, instead of on each separate account; and the day-book is itself simply a *ledger* account of merchandise, in which all the different kinds are huddled together. By balancing this account, the profit upon the merchandise is ascertained, and it may

be carried to the profit and loss account,* or (if no profit and lost account is opened) at once to the stock account. Consequently upon the credit side of the stock account, there will be the net stock at the commencement *plus* the profit; and this of course must be exactly equal to the amount of his property, to be ascertained by a Balance sheet.

To make up a balance sheet the trader must collect upon its debit side all the debts due to him, the cash in hand which he will take from his cash-book, and the value of the goods in hand, which he has already ascertained by examination; and upon the credit side he will place the debts he owes; and the balance of this gives the state of his affairs—that is, his *net* property, which must of course be equal to the amount of his property when he commenced, *plus* the intermediate profit; and consequently this balance sheet, or state of affairs, must balance the stock account.†

But what is all this? It is simply the Italian method of balancing. The day-book and cash-book, in single entry, are neither more nor less than ledger-accounts, though they are not entered in the ledger, which, indeed, is not absolutely necessary provided they are treated as branches of it. But it would be much more advantageous if they were so entered and balanced in the usual form.

The great difference between the systems of single and double entry is the neglect of the real accounts. This neglect, however, is in some degree compensated by the form in which the day-book is kept, that is, in

* If profits arise from any thing else besides merchandise, a profit and loss account must be opened; if not, it is not necessary. † Page 29.

ledger-fashion; for it thus presents the ledger-account of all goods bought and sold, and by inserting the amount and value of the goods in hand, the neglect is so far compensated, that the books can be balanced according to the rules of the Italian method; but any person who would really understand what he was about, when he keeps his accounts by what he calls single entry, would do well thoroughly to make himself master of the principles of the Italian method; for without thoroughly understanding those principles, he will find himself at a loss to cope with any difficulty that occurs.

The upshot of the whole matter is, that a person thus keeping his books by single entry is, after all, only keeping the ledger of the Italian method, and nothing else: his cash and day books are the ledger-accounts for cash and merchandise, in which he makes one entry, and what he calls his ledger is the rest of the ledger of the Italian method, in which he makes the other entry when he posts it. He has kept an account of the *value* of his goods bought and sold in his day-book, but he has neglected to keep an account of the *quantity*, and this deficiency is supplied by taking an account of what is left at a general stock-taking. If a person can manage in this way, it may be convenient that he should do so, but he would do much better if he carried the results of his cash-book and day-book monthly into a cash and merchandise account in his ledger, and take the balances in the usual form; and thus reap all the clearness and advantages of the double entry, as far as the neglect of the real accounts permits. It is, however, of great consequence for him to bear in mind what his accounts really are, viz., simply a ledger; for

then he can solve the difficulties which often arise in the system of single entry, and has a clear rule whereby to guide himself, which is simply the principle that there must in every case be two entries for every transaction. The most troublesome are the following. If the trader sells goods for cash, the entry must be made in two places, viz., to the credit of the day-book and debit of the cash-book. If he sells goods on credit, he debits the purchaser and credits the day-book. If that purchaser subsequently pays him, he credits the purchaser and debits the cash. If he barters goods for goods, he affixes a value and debits the day-book to the goods and their value, and credits the day-book by the goods delivered, and the like value. If he lends money, he debits the borrower and credits the cash. If he pays a charge for merchandise, he credits the cash and debits the Charges-merchandise. These are the items most likely to confuse a person keeping books by single entry; but the simple rule that in all cases there must be double entry, will fully put him in possession of the mystery. It must be observed that these double entries are not made both at the same time, for one only is made first, and the other when the ledger is posted. In this way may be kept all accounts of a common business, such as of a tailor, shoemaker,* and also of a professional man.

With respect to a retail trade in which a *till* is kept, and in which for every item sold the amount is passed into the till, the cash-book and day-book may be kept precisely in the same manner. If goods are bought on

* It is not uncommon for a waste-book to be kept in such trades, from which the transactions are posted into the day-book, cash-book, and ledger.

trust, they should be passed to the debit of the day-book and thence to the credit of the seller. If they be bought for cash, they are passed to the debit of the day-book and credit of the cash-book. If they be sold on credit, they should be passed to the credit of the day-book and debit of the purchaser. But if they be sold for cash, the cash passes into the till; from which it is taken out at the close of the day, and should be passed to the debit of the cash and the credit of the day-book. For private expenses a private account will be opened in the ledger as usual; and this will be debited for all sums drawn upon the cash, which will be credited with them. Viewed as a ledger simply, the whole mystery of single entry is so clear, that it cannot be necessary to add another word upon the subject. See Appendix XII.

Almost all different lines of business require variations in the mode of keeping their accounts. A banker's is one of the most simple of the double entry, and a solicitor's one of the most complex of the single entry accounts.

A banker deals only in the medium of exchange money. Cash-books and bill-books are the first in which the entries are made. Upon each side of the house, viz., the paying and receiving sides, the payments and receipts are entered in the cash-books at the paying and receiving counters. In these cash-books the gross sums paid in are entered, while the notes, cash, and cheques are handed over to the clerks who keep the waste-books, to take exact minutes of the particulars. No journal is kept, but both the cash-books and waste-books contain the original entries. The ledger accounts are made up each night, and a

trial balance made. The pass-book of each customer is the counterpart of his ledger account.

A solicitor deals only in his professional skill and exertions; but he makes large disbursements, and has often large sums of money of his clients passing through his hands. The books of solicitors are kept in different ways; but commonly they are kept upon the principles of single entry. A waste-book is rarely used, but a journal is sometimes kept, though in its construction it deviates considerably from the ordinary journal. The chief books are the attendance-book and cash-book, which contain the accounts of all business done, and of all cash transactions, and the ledger contains the stock and all personal accounts; and into this ledger the cash-book must be posted; but the contents of the attendance-book are carried into it by a process subsequently detailed. The other books used in asolicitor's office are the disbursement-books, stationer's-book, letter-book, and a book which is rather improperly called a bill-book.

The attendance-book contains an account of all the business done. In this the solicitor, or, if a firm, each partner, and all the clerks, enter every matter of business they transact in the course of the day. It is, therefore, equivalent to the invoice-outward-book of the merchant, which contains his sales; and if the charges are carried into a column in the margin, it would exhibit the gross profit; but this is seldom done.

The cash-book contains the general cash account, and the disbursement-books are branches of it. As a solicitor makes a great number of small disbursements, by his clerks, he provides each managing-clerk with a disbursement-book for petty disbursements, and to each

of these clerks he entrusts a sum of money, as 10*l.* at a time, for small disbursements. The sum given to the clerk is debited in his disbursement-book and credited in the cash: it is spent by the clerk in disbursements for different clients, all which in due time will be returned. The observations made in page 37 respecting the necessity of passing all sums through a banker's, are particularly applicable here. All large sums should be invariably paid by cheque, as well as the sums given to the managing clerks for disbursements, and for petty cash to the keeper of the petty cash-book.

The stationer's-book is the account current of the law-stationer against the house; and, though a branch of the ledger, is a book without the assistance of which a solicitor could not proceed to make out his bills or post his ledger; as it contains the amount of the stamps to be charged, as well as an account of the length of each item engrossed, with the prices of the engrossing copies, &c.

These four books, with the letter-book, or rather its index for correction, constitute the parts into which the waste-book of a solicitor may be said to be divided. Of these books the accounting clerk posts the items, carrying some of them to the ledger, and others to the different bills he is preparing.*

As the business done for clients, and the disburse-

* Some houses post their subsidiary books not at once into the ledger, or into the draft bills, but into a book which they call the journal; in which they separate the different accounts from one another, and sometimes, by means of a double column in the margin, they distinguish the charges from the disbursements: but then they rarely re-copy the bills into the bill-book, so that they do not preserve an exact fair copy, which is an advantage of more consequence, than the business-like appearance of a journal.

ments made on their behalf, constitute the only two articles in which a solicitor deals, it is only requisite for him to transfer the several items from the attendance, cash, and disbursement-books,* to the accounts of the several clients, correcting them by the stationer's-book, which he has at hand. But these cannot be at once carried to the ledger, not only on account of their bulk, but of the variations which it may be necessary to make in the bills, to meet the taxation which may be made, and the difficulty of entering the items from so many different books at once in the right place. And as a solicitor is more especially under the jealous eye of the judges, and amenable in a very summary way for any misconduct or even mistake, it is imperative upon him to keep a most exact copy of every bill which he sends out, as well as to be extremely careful in the construction of his bills. To meet these difficulties, a solicitor's accountant generally draws out each bill in a rough draft, entering the chargeable items from the cash and attendance-books upon loose sheets, correcting them from time to time, as necessity requires. It is also very convenient to keep separate transactions dis tinct from one another, and to make different bills for each transaction. In this manner all the items of the cash, attendance, stationer's, and disbursement-books, become at length posted either in the draft bills or in the accounts of the ledger.

When any bill is completed, it is written out fair, and an exact copy is entered in a large book called (rather improperly) the *bill-book;* and the bill is then delivered.

* As he postssthe ledger or bills, instead of posting the 10*l.* given to a clerk, which appears in the cash-book, he will post the items he finds in his disbursement-books.

This *bill-book* is therefore a branch of the ledger, containing the items of business done for each client. The sum total only of each bill is carried into the ledger, to the debit of each client's account. If a solicitor only carries the amount of the bills to the debit of the client he may be said to keep his books by single entry; but in this he cannot have the advantage of balancing, because his attendance-book can scarcely by any chance be so well kept as to correspond in all things with the items carried into the bills; and therefore it is of but little use to be particular in carrying the items out into the margin of the attendance-book. But if a solicitor chooses to keep his accounts by double entry, his books are susceptible of the greatest accuracy; and it is effected as follows:—When he carries the total amount of each bill to the debit of his client, he should make a corresponding entry in another ledger-account, called the Business-account, to the credit of that account to the same amount. This is equivalent to the Goods-account of the merchant; and by opening this account his books will accurately balance, and this account will represent the gross income of the firm. It is a branch of the Profit and loss account.

It is also very common for a solicitor to have money of his client passing through his hands. To meet this occurrence, a solicitor must open in his ledger separate accounts for these transactions; and with the bills deliver a general cash account current, comprising all the bills and transactions.

In posting the cash-book into the ledger, the rent, taxes, salaries, petty disbursements, and different branches of the profit and loss may have separate accounts opened for them, as well as a private ac-

count for each partner if the concern be a partnership, and the accounts may be balanced in the usual way.

I have seen, also, a very simple method adopted among partners careless in accounts, and who did not keep a banker, but made up their accounts as between themselves, half-yearly, each paying disbursements as it happened, sharing large receipts, and retaining small sums that came to their respective hands; and I mention it not as an example to be followed, but in general to be avoided; but it illustrates the preceding observations, and may be useful where accounts have run in arrear, or by any accident have become confused. An account was opened for each of the three partners in a private ledger, in which each was debited with what he received or retained, and credited with his disbursements. An account of the partnership or Business-account was then made up, in which the partnership was credited with the amount of the bills received, and debited with all the disbursements, both which were picked out of the bills for the occasion. The amount of the bills received by the partnership would be of course equal to the amount received by all the partners together, and the amount of its disbursements to the amount paid by the three. The balance of the partnership account was, of course, the profits. It was divided into three parts, and one-third was then carried to the credit of each of the three partners, and the balances determined in the usual way; and thus they settled how much each was indebted to the other.

Most persons in business have two sets of accounts, one for their business, and one for their private expenditure; and the receipts of the latter are but the profits

of the former. Such are the private accounts of a merchant, a trader, or a professional man; and the accounts of an annuitant, or of a fundholder, or of a landholder receiving his rents regularly from a steward, who relieves him from the necessity of keeping the general accounts of his estates, are of a similar description. These private accounts so far differ from the accounts of business, that they have nothing to do with the earning of the money, but simply exhibit an account of its receipts and expenditure, where it is applied to household expenses, furniture, or the like. The accounts of business exhibit the production of a man's income, and his private accounts set forth its consumption.

If a person find it convenient so to do, he may mix them together. Thus, if his private expenditure is inconsiderable, and not worth opening books for, he can, by a little extending the private account opened in his general ledger, make that answer his purpose, or he can pay into another bank, or to a private account with the banker of his business, certain monthly sums which he can apply to household purposes, and those of his privy purse, without taking any account of them; or he may reverse the process, if his dealings are like those of some professions, or if his business requires but few ledger accounts, as, for instance, an architect, whose profits generally come in large sums. Such a person can keep his private accounts at large, and open in them an account of his professional business, and distinct accounts for the parties he deals with in his profession; and he may proceed by double or single entry as before.

The private accounts of a person are usually entered in a cash-book and ledger, which last can hardly be dispensed with, unless the party spends exactly what he receives, and keeps no special account of his furniture and other chattels that accumulate. Upon the debit side of this cash-book, he enters all the sums he receives, and upon the credit side all he expends; and as he comes to the end of each page, the balance will coincide with the sum he has in hand; and this balance is a perpetual check on the account. There is no necessity for him to pass every item of the cash-book into the ledger to their several accounts, but if he wish to do so, he can do it at the end of the year, or at the end of each month, by making an analysis of the items of his income and expenditure (by a process analogous to journalising on the extended scale); that is to say, by picking out the items upon a loose sheet of paper, and casting them together. And this analysis he may enter at the end of each year or month, at the foot of his cash account, where it will form a summary of his receipts and expenditure, and exhibit the exact state of his proceedings; and if he has extracted it correctly, the balance of it will agree with the balance exhibited by his cash-book, which is also the balance he has in hand. It is always advisable for every person, be his dealings ever so simple, thus, or in some manner, to examine his accounts at the close of each year, at least; not only to see that he has actually received all the rent, interest, or income, that he ought to have received, but also to bring before his eyes any particular items of expenditure in which he has been inordinately, and perhaps unintentionally, extravagant.

If a person spends all that he receives, a cash account

is sufficient without a ledger, if he break it up at the conclusion of each year, and examine its contents. If, however, it is esteemed a matter of too much trouble for a man of property to keep a simple cash-book like this, and to make such an analysis at the conclusion of the year; there is yet another way by which even the most careless, though he do not choose to take the trouble to keep any accounts at all, may nevertheless have it in his power to have them made up at any time he may think proper by some other person; and as it may be done by a very simple process, there can hardly be assigned a reason why the most careless should not adopt it. It is simply this—to pay every sum received into a banker's, and to pay all tradesmen's bills, housekeeper's accounts, and every item of expenditure of any moment, by cheque, naming the trade as well as the person in the cheque; and, for the expenses of the pocket, to draw by cheque, in the name of Self or Privy-purse, from time to time as may be wanted, any sum, as *5l.*, *10l.*, or *20l.*, or as much as he may think proper to keep loose in his pocket, of which he need take no account. If the most careless person would adopt this plan, his accounts would be regularly kept at his banker's in such a manner, that if at the same time he preserved his receipts, bills, and all letters of business, he could at any time, after the lapse of many years, have his accounts perfectly made up in the course of a few days. By this simple mode he would save hundreds to himself by having constant vouchers for his payments, and might save thousands to his family, should his affairs ever come into dispute before the courts after his death. But if he would take upon himself the further trouble to write upon the fly-leaves of his cheque-

book the contents of each cheque, viz., the date, the person, the sum drawn, and the purpose for which it was drawn, he would really approximate to something almost deserving the name of an account, and it would become an account, if upon the backs of the flyleaves he would enter the sums he paid in, and from whom.

But it is impossible too strongly to impress upon all persons the necessity of passing cash through a banker's, if the income amount to a sufficient sum; and to adopt the same method of drawing cheques to Self for loose money to be kept in the pocket till expended; because, in case of accident, or unjust claims, the bankers afford additional evidence by which the facts, if not directly, may, in almost every instance, be indirectly ascertained by tracing the notes; and the accounts may be again made up when lost or destroyed, if any pressing emergency should render it important; and a cash-book thus kept exhibits an exact counterpart of the Banker's pass-book.

With respect to the pocket-money, it will often happen that a person pays out of it sums, of which he wishes to keep an account. He can easily accomplish this by posting his cash-book whenever he draws a sum for privy purse, and entering the sum so drawn as the last item and its amount within the margin; and when he has spent the sum and comes for another, he can carry all the items of the last sum which he wishes to take account of into the columns, and give the balance only as privy-purse expenditure, as given in Appendix XIII.

This method, however, in which no accurate account is taken of pocket-money, does not always suit the accu-

racy of all persons; yet to introduce every item into the cash-book would be superfluous. This can be remedied by using a Petty cash or Day book, containing every item, and which may, from time to time, be posted into the cash-book. The form of such a Petty cash or Day book may be like that given in the Appendix IV., in which the receipts are upon one side, and the expenditure upon the other.

A person thus particular may also employ subsidiary books, which may be kept by his steward, housekeeper, groom, or any other domestic who may be intrusted with money for expenditure.

It often happens, notwithstanding the simplicity of a man's own accounts, that he may experience inconvenience by the money of other people passing through his hands, sometimes in the shape of occasional loans, or of trust monies, or in the payment of small annuities for other people, or otherwise. The introduction of such items as these, into the cash-book of a party accustomed only to a simple cash-book, would so far confound his own with other people's money, as to destroy the advantage he formerly possessed of seeing, at the conclusion of each page, an exact statement of his income and expenditure, and whether his balance was correct; and it would be a source of annoyance, unless he could keep them distinct from his own accounts. If he attempted to do this in another book,* he could never have his balances before his eyes. It may, however, be easily accomplished, by adopting a cash-book ruled in double columns, and entering all receipts and pay-

* For all matters of importance, such as an executorship, of course, he would keep a distinct, and even open a separate, account with his banker.

ments upon his own account in the inner columns of the debit and credit sides, and the money of other people, and all loans and repayments in the outer column, by which means the party has, in his own cash-book, at all times before his eyes, the exact amount of his own receipts and expenditure. See Appendix XIII.

Upon the advantages of a double-columned cash-book we may observe, that as the party inserts in the inner column of the debit side all such receipts as actually belong to himself, and constitute his income, and upon the inner column of the credit side all his expenditure, these two columns always show him exactly how his own account stands; and by the monthly analysis of these two columns he can always examine his own income and expenditure, and class the items of them, if he chooses to carry them forward into his ledger. But the two outer columns are of as great importance; for the debit column exhibits all the money of other people he receives, and the credit column exhibits all the money he has lent to, or paid for, other people, and any investments he has made; and therefore every item in both these outer columns must be carried into the ledger, which he can do whenever he posts his ledger; but the items of the inner columns he may suffer to stand over for the whole year, or he may analyze and sort them monthly, and enter them at the foot of the account, and thence pass them into the ledger, to such accounts as he deems it necessary to open. If he wishes to prove the correctness of his entries at any time, he has simply to add together the two debit columns, as they contain all the money he has received, and add together the two credit columns, as containing all the money he has spent, or laid out, and the differ-

ence between the sum total of the debit and credit columns will be his balance in hand.

With a cash-book thus formed, a person can with great ease construct a ledger, in which he must open a Stock account containing a total of all his property to begin with, and accounts also must be opened in the usual way for all his debtors and creditors, and for his banker,* whose account will be a counterpart of his pass-book. Into the ledger he must carry all the items of the outer columns of his cash-book to his several accounts he will then open. With respect to the inner columns they contain the items of his income and private expenditure. Of these articles of expenditure some accumulate, as furniture, books, wine; of which he can keep separate accounts in his ledger, as they are articles of value, and constitute part of his property, and would be taken into account as such by his executors after his decease: and from these accounts should either be written off the consumption, or allowances be made for wear and tear. Some of these accounts are commonly kept in different books, as the catalogues of a library or of a wine-cellar. Other articles are totally consumed, as food, apparel, privy purse, wages, and the like. The sums expended upon these he may pass at once into the account of Household expenditure; for these are branches of the Profit and loss sheet; and so is interest upon loans he borrows.

* If he passes every thing accurately through his bankers, his cash-book will be the counterpart of his pass-book; and cash at the bankers he may consider as cash in hand; but, if not, it is better to open for him a ledger-account, and consider him as a Dr, passing his account into the second column of the cash-book. Some persons prefer to keep the inner columns for the banker alone, as in Appendix IV., in which case those columns are counterpart of the pass-book.

If he chooses to keep ledger-accounts of the accumulating items, he can easily prepare the way for that purpose when he analyzes his cash-book, by classing them together, and a little apart from the items which are simply matters of consumption, carrying the sums to account; and if he pleases he can let them stand over for the year or post them monthly. See Appendix XIII.

To balance his accounts he must first balance all the ledger accounts, and draw out a Balance sheet in the usual form, containing on its debit side the balances of his estates, investments, and credits, and add to them the balances of the furniture, library, and other accumulating accounts, which he has carried into his ledger; and on the credit side his debts, and this will be a balance sheet in the usual form. His Profit and loss sheet will simply be made up by placing on its credit side the sums total of the income he has received, and upon the other side all sums spent in articles consumed; and these with the Stock account, balance each other as explained in page 29. A reference to the Appendix XIII. will show clearly the way in which such a balance may be made.

But all this, though it looks like single entry, is really double entry. When a person keeps only a cash-book and makes single entries from it into the ledger, he may suppose he is keeping his accounts by single entry, and so indeed he is; but his cash-book is a ledger account, and it is in that that he has made the other entry. If, however, he post only his *personal* accounts from his cash-book to his ledger, he is using single entry, and from this he can obtain no results; but if he goes further, and either posts all the other items to the respective branches of Profit and loss, or if he only

makes the analysis explained above, he is actually using double entry, and may have all the benefits of the balance of the double entry system, without the inconvenience of a waste-book or journal; and when he writes down the account of his receipts and expenditure as in Appendix XIII., he is then really writing down the profit and loss sheet which balances the account.

I cannot close this branch of the subject without pointing out the necessity of removing bad debts from the ledger. Unless this is done, they are included in the stock, and make the annual profits appear larger than they are. If these apparent profits are drawn out as real profits, the consequence must be speedy and inevitable ruin. Their removal is effected by opening a bad debt account, which is a branch of the profit and loss, and carrying every bad and doubtful debt to its debit side, and crediting it with all compositions and debts unexpectedly recovered. It is also advisable to make an allowance for bad debts, which may be effected by debiting the amount of all the *sales* with a per centage of 2 or 3 per cent. for bad debts, and crediting the bad debt account with the same sum. This plan will be found a most efficacious protection to a merchant, and will be sure to keep him upon the right side.

CHAPTER V.

PARTNERSHIP.

The most complicated branch of account is that which relates to partnership; and it is rendered still more perplexed in this country by the differences which exist between the law of the land respecting partnership and the customs of merchants, universally adopted here and in every country in which the Italian system of accounts is used.

Merchants continue to carry on their partnership accounts upon the clear and distinct principles of the Italian method, regardless of the law of England; and so long as things go on prosperously among partners, no difficulty occurs; but the moment it becomes necessary for them to sue, or be sued by, third persons, or to have any dispute between themselves decided, or to dissolve their partnership, or to have recourse in any manner to the English courts of law or equity, the simple principles of merchants are superseded; and the difficulties become so formidable, as to amount in many instances to an absolute denial of justice: and, ndeed, where justice is obtained, the machinery of the court of equity through which it comes is so dilatory, and the system of taking accounts in that court is so much at variance with the system of mercantile accounts, and the process so expensive, that the legislature has at last been forced to turn its attention to the

subject. By an order of the House of Commons evidence has been taken, and a very valuable report made by Mr. H. Bellenden Ker, in which the difficulties are stated at length. With respect, however, to some of the remedies which have been proposed to obviate these difficulties; I must take the liberty of dissenting, and would beg, with much diffidence, to call attention to some of the mercantile principles of partnership accounts, which have been hitherto as much overlooked in the courts of law and equity and by professional men, as have the principles of the courts been disregarded by merchants and accountants. I am thus anxious to bring forward these discrepancies at this moment, when it appears to me that there is a possibility of introducing some measures which may rather tend to increase than alleviate the mischief; when almost every evil may perhaps be remedied at once, and with but every little alteration.

The common law of England is properly the custom of the land. In its earliest progress it was simply defined by the decisions of the judges. The only accounts which in ancient times came under the cognizance of the courts were the accounts of the Exchequer, or accounts of a nature strictly similar, such as the accounts of stewards or bailiffs to their lords; and for such accounts as these, where one party only was accountant, the machinery of the courts was fully adequate; nor was it till the more complicated accounts of merchants (where both parties were mutually accountant to each other) came under its consideration, that any deficiency was felt.

The customs of merchants were not originally among those customs of the land which were regarded as its law; but as points of mercantile law arose, the judges

felt the necessity of adopting the mercantile customs and amalgamating them with the law of the land. The judges of the courts of equity in particular endeavoured, without a very clear notion of the subject, to ingraft the customs of merchants upon the common law and practice of accounts to which they had hitherto been accustomed. The assistance of merchants was from time to time called in, as difficult points presented themselves for the decision of the judges, and hence arose that extraordinary confusion of Mercantile customs, Roman, Canon, and English law, which constitutes the present law of partnership in England.*

This confusion, indeed, became so great, that the courts of common law found themselves and their machinery inadequate to deal with the subject; while in the courts of equity there has been a continued struggle to approximate more and more to the customs of merchants, and to remove the stumbling-blocks presented by the old foundations of the common law, which obstruct the erection of a system in accordance with the wants of the commercial classes of the nation. Indeed there is no branch of the law in which the exceeding merit of Lord Eldon is more strongly exhibited than this, in which, with the most painful and patient attention, he laboured to obviate and overcome the difficulties of the subject, and by a particular examination and careful adoption of the custom of merchants, to establish such principles as would eventually bring the law and practice of the courts of equity into conformity with the necessities of an extended commerce: and we find him repeatedly lamenting the strange rules so obviously at variance with mercantile customs with which he had to

* See Collyer on Partnership, p. 1.

contend. These, of course, are matters which the mercantile part of the nation, who felt only the pressing difficulties of their situation, could neither see nor be expected to appreciate. The interference of the legislature has from time to time obviated some of the evils by the enactment and revision of the bankrupt, insolvent, and other laws: and as the inconveniences of the subject are now beginning seriously to call for some legislative enactment, it is of the utmost importance that it should be viewed in every light.

The first object is clearly and distinctly to ascertain the view which merchants themselves take of partnership; for it is so different from the view taken of it by the profession of the law, that unless we state the difference at once we shall be involved in confusion.

The legal definition of partnership is, "that it is a joint tenancy without benefit of survivorship as between the partners themselves, but with survivorship in regard to third persons; who may sue, or be sued by, the survivors."

The mercantile notion of a partnership is simply, that it is a kind of CORPORATION. The *firm* is always regarded as a kind of impersonification. And though the courts of law and equity have not suffered traders to carry out the principle to its full and necessary extent, yet whenever the crown or legislature has established trading companies, such companies have always been impressed with the character of a corporation.

A cursory examination of the incidents of a mercantile partnership will be sufficient to prove this most important point.

I. The first incident of partnership which exhibits the corporate character of the firm is, that the accounts of the partnership are *always* the accounts of the FIRM

itself, and *never* of the Partners; and if mercantile accounts are placed in the hands of an accountant to be made up, an English, a Dutch, or an Italian accountant would not make the slightest difficulty upon the subject, but would all make them up on the same principle as the accounts of the firm, and not as the accounts of the individual partners; and he would deal with the accounts of the individual partners as if they were simply debtors or creditors of the firm.

From a perusal of the second chapter of this treatise, it will be seen that, upon the opening of the books, all the property brought into the concern is entered in the Stock account, and whether an individual conducts a single concern, or whether he conducts two distinct concerns, or whether two or more persons are connected in conducting a concern as a partnership, the accounts are universally opened in precisely the same manner, viz., every thing brought into the concern is credited to the Stock account, and then distributed throughout the ledger-accounts, in which ledger-accounts the several articles and persons are made D^rs^ to Stock for the several items passed into those accounts; and if there be partners in the firm they are made simply creditors of it, precisely in the same manner as any other persons dealing with the firm. Each partner has his own separate account opened with the firm, and is credited with every thing he brings into it, and debited with every thing he draws out of it. Upon a Rest the net profits are determined, and divided between the partners in the proper proportions; and the share of each partner is carried to the credit of his own separate account. Where the books are kept by the partners themselves without the intervention of a clerk, the division of the

profits may be made at once in the general ledger; but it is a method far preferable, and more usual, to keep the division of the profits, and accounts of the partners in a separate book, called the Private ledger, or Rest-book, or Rest and division book; for this method of making the Rest and keeping the partnership accounts in a separate book, is more advantageous, as it does not expose to the clerks the private accounts and obligations of the partners as between themselves, and it leaves the accounts of the concern unentangled with the partners, exhibiting some other principles of partnership in a clearer light.

The manner in which partnership accounts are kept, will be immediately understood by a reference to the Private ledger in Appendix III.

II. The next immediate consequence of the impersonification of the firm, and regarding the partners in matters of account only in the light of D^{rs} and C^{rs} of the firm is, that the firm, *as a firm*, is always considered exactly solvent; the partners being, as it were, the guarantees of its solvency. They stand behind it and support it. They are C^{rs} of it for all its stock, and they are D^{rs} to it for all its deficiencies. When they first bring in their capitals, the firm is immediately, in the private ledger, made D^{r} to each of them respectively for his proportion of capital. Whenever Stock is taken and a surplus appears, that surplus is divided according to the shares, and carried to the accounts of the respective partners. If, instead of a surplus, a deficiency appears, the partners must make up the loss; which is therefore shared according to the respective shares of the partners, and carried to their respective accounts, as so much loss which they must replace. The firm, therefore, as a firm, is always

exactly solvent, and the partners stand behind it, and jointly guarantee its solvency.

After a division has been made, and the shares of each partner carried to his account, the books should be signed by all; and if the firm is to be continued upon the same terms, each partner will replace the same amount of capital, and draw out only the surplus which appears due to him in the shape of profit; or, if he has already overdrawn it, he will simply have to replace his capital. But, if he is unable to do so conveniently, the partners may either settle the matter by leaving the overdrawing partner a D^r to the firm to the amount, or if they agree that the stock shall be diminished by the amount, he may become a D^r to his partners in the sum, deducting his own share of the amount; and, if he gives his partners notes or bonds for their shares of the amount, such notes or bonds will be available, notwithstanding the partnership, and may be enforced in the courts of law. But till such a division is made, partners, according to the custom of merchants, are never D^{rs} or C^{rs} of one another, but only of the firm. There is, however, a case in equity in which it was held that a partner was forthwith a D^r to his copartners. But I take it, if the point were again discussed, it would be quickly overruled.

III. Another equally important incident, in which the mercantile world recognises the corporate capacity of the firm, while the courts of equity are bewildered upon the subject, is, that all the property brought into the firm, whether it be personalty or realty cash goods or land, belongs, in the mercantile view of the case, to the *firm* itself, and not to the partner who brings it in, unless the general custom is controlled by some

specific arrangement between the partners. And the sole inquiry of an accountant is, Whether the property was taken and adopted by the firm, or whether the firm simply hired it of the partner who brought it in? This most important incident we shall presently have occasion to discuss at large.

IV. Another incident of partnership in a mercantile view of it is, that every member is, in fact, an acting and all-efficient officer of the firm; and able as to third parties, not only to dispose of the partnership effects, but also to bind the firm by his individual acts and deeds in all partnership transactions. This principle is partially admitted by the law of England, which permits partners to dispose of the property, and bind the firm by bills of exchange, and in all transactions by simple contract, but not by deed or other specialty.

V. Upon the death of any member, the firm, according to the law of England, is dissolved; but yet, for some purposes, it is still regarded as in existence. But in the mercantile view, and according to the Roman law, the partnership may be carried on to all intents and purposes by the survivors (upon paying to the representatives of the deceased the sums by which he was a C^r of the firm). The law of England, however, permits his representatives to insist upon a *sale* of all the partnership effects, which, if put into execution, works the most grievous injustice, especially among those large and permanent concerns in this country, some of which have continued upwards of two centuries, though, according to the law of the land, they must have been dissolved every five or ten years at least, and liable at each dissolution to be totally ruined.

Another rule of the courts of equity is equally at

variance with the notions of mercantile men, viz., that if after the death or bankruptcy of one partner, the continuing partners carry on the business without making up the account finally, and paying the balance due, the representatives of the retiring partner may claim a proportion of all the profits subsequently made through an indefinite series of years.

VI. The next incident which should follow the recognition of the corporate capacity of the firm, is, that it should be able to sue, and be sued, in its corporate capacity as a firm. But, unfortunately, in England, the corporate capacity of the firm has never yet been sufficiently recognised in the courts to admit the principle. The difficulties and distress consequent upon the non-admission of this principle, have now risen to such a height as to call for the immediate interference of the legislature; and of all the witnesses, who have been examined, there is not one who does not advocate some immediate measure for the remedy of so great an evil.

VII. As the partners are interested in the concern like members of other corporations, mercantile men can see no reason why there should be any objection in the courts to entertain suits concerning any disputes that may arise among partners relating to the firm, or why the accounts of the firm should not be taken before a competent tribunal, in some manner at the instance of a partner, as an individual of a corporation has a remedy against the corporation: yet they can obtain no settlement of any dispute without incurring the penalty of a dissolution, and sale of the whole concern.

The principal reasons assigned why an adjustment of partnership disputes should not be permitted are,—1st,

That joint tenants, by the ancient rule of law, cannot sue each other, which, in the case of partnership, is most inapplicable ;—2dly, That if the Court of Equity took upon itself to adjust partnership accounts and disputes without a dissolution, they would be overwhelmed with business. This, however, can hardly be a reason why justice should bedenied or its operations clogged ; though it is a good and valid reason either for an additional number of courts, or for an improved machinery of them ;—and, 3dly, that accounts are continually varying during the progress of the suit ; an objection for which a remedy is easily found, by directing the accounts to be taken only up to a certain time.

In the following chapter, we shall venture to suggest a simple practical plan by which we believe all these mercantile incidents of partnership may without difficulty be admitted and acted upon in the courts, without either overwhelming the courts or introducing any idle or speculative novelties.

Having thus generally stated the great and fundamental principles, upon which partnerships are conducted, according to the ideas of merchants and accountants, and roughly pointed out the differences prevailing in the laws of England, we shall find it less difficult to deal with the many intricate matters which occur in the details ; and we shall discover more clearly the advances which have been already made by the courts to graft the customs of merchants upon the law ; and also ascertain what is actually wanted at the present moment to complete the work. For that purpose, a survey of the common clauses of a partnership deed will bring necessarily into view and in order all the points which require to be discussed.

A partnership in England may be constituted not only by deed, but by parole, or even by the acts of the parties. To constitute a partnership, there is no necessity for any written articles of partnership either by deed or agreement. On account of the deficiency of the law in affording remedies to partners as between themselves, some of the largest mercantile houses* have preferred to carry on their business without articles, trusting simply to the good faith and business-like habits of each other, rather than fetter themselves by any document that savours of the law. In some respects there may be an advantage in this, as they are left unfettered to meet, by arrangement at the time, every difficulty as it arises, to pursue any other branch of business they may think proper, and to dissolve the partnership at any time, whenever any one of the firm is willing so to do. So long as mutual good faith is kept, and a good understanding exists, no great difficulty can arise, whether a deed exists or not, as all the above advantages are usually provided for in a deed, and clauses which have not been acted on are looked upon in equity as if they had never been inserted. But should the bankruptcy or death of any partner occur, requiring the affairs to be wound up in bankruptcy or in the courts of equity or should any misunderstanding arise, by which an obstinate or ill-advised partner should insist upon a dissolution and a *sale* of all the partnership effects, the want of the usual provisions to meet these and a variety of other difficulties incident to a hostile dissolution would be felt severely.

It is quite true that the state of the law is such, that

* See Partnership Report, p. 42.

even where there are articles of partnership it can rarely happen that the partners can obtain any redress as against each other, for the courts of equity will seldom interfere, except a dissolution of the partnership is required: and it is equally true, that though all articles of partnership contain clauses to refer disputes to arbitration, there exist no means to enforce those arbitration clauses, if any of the partners object to do so: and, consequently, upon the first view of the subject, the usefulness of articles of partnership appears to be extremely confined; nevertheless, it is asserted, and very justly, by Lord Eldon,* "that it is of the last importance that all partnerships should subsist, if possible, upon written articles; and that these written articles should lay down a clear rule, in what way the interests of the partners, in the different events that may occur, are to be disposed of." "It is quite obvious," continues his lordship, "that in some of the magnificent partnerships which are carried on in this country, if they were to be dissolved to-morrow, there would be a necessity for knowing, in each of them, what rules of equity were to be applied to them, not during months, but during many years, until all the concerns of the partnership could be wound up. And when you come to consider, that after the partnership is nominally ended, money may be supplied by one partner, and labour may be supplied by another, I feel that I cannot possibly state too strongly the necessity of all commercial men shutting out the interference of this court, by laying down in their own articles what is to be done in their respective cases."

* Crawshay v. Collins, 2 Russ. 343.

In this judgment, Lord Eldon had before his eyes the difficulties of winding up the affairs of a concern where a hostile dissolution had occurred; and, indeed, almost the only purpose for which partnership articles are practically available, is in providing a written document declaratory of the intentions of the parties, to which the courts of equity can refer for winding up and settling the affairs, upon a dissolution. If there be articles declaring the intention of the parties, the courts always take them as their guide in settling affairs after dissolution. But if the parties have neglected to provide against the contingency of a hostile dissolution, it is the fault of the parties, and not of the court, that their intentions must be gathered from their acts, at a delay and expense, which must be a grievous and unnecessary addition to the vexation inflicted by the dilatory and expensive machinery of the courts themselves.

There is, however, a much more important function which articles of partnership perform, as a code of directions, to which the partners may refer as a guide in all their transactions, and upon which they settle among themselves, or by the construction of friends, or by the opinion of counsel or accountants, a variety of differences which arise, without having recourse to the interference of the courts. This is a most important use of partnership articles; and they operate beneficially, not only among parties who wish to deal uprightly and liberally in all things with their partners, but frequently restrain partners of a different character within proper bounds; as every legal instrument, be it ever so void and worthless in itself, binds as strongly as the best, so long as the parties to be bound have an opinion of its strength, and are ignorant of its worthlessness.

The stipulations of partnership articles are usually drawn in the form of covenants. The clauses may be divided into those which relate, firstly, to the commencement of the partnership; secondly, to the regulation of its internal concerns during its progress; thirdly, to the duties of the partners to each other; fourthly, to the accounts; fifthly, to its dissolution and winding up of its affairs; sixthly, to partnership disputes.

To give a more comprehensive view of the subject, and enable persons entering into partnership to ascertain their own views, which are frequently very obscure and ill-defined even to themselves, it will not be amiss to enumerate the principal clauses of partnership articles, and afterwards upon the clauses to make the observations that are necessary.

I. The principal points relating to the commencement of a partnership, to which attention should be directed, are—

1. The nature of the business.
2. The date of the commencement of the partnership.
3. The term and duration of it.
4. The style of the firm.
5. The place of business.
6. The capital of the firm.
7. The capital which each partner is to bring in.
8. The share of each partner in the capital.
9. The ratio of the profits and losses to be taken and borne by each partner.
10. The premium or consideration for the admission of new partners to an old firm, if any.
11. The repayment of part of the premium upon the death of either partner within a limited time, if any.

12. The valuation of the old stock, if any.
13. The right of any partner in any specific property reserved.

II. The points relating to the internal regulation of the business consist chiefly of such allowances and provisions as ought in all partnerships to be clearly defined and understood.

1. Allowance of interest upon the capital, if requisite.
2. Allowance of interest upon sums brought in as loans.
3. Allowance to partners to draw certain sums at stated intervals.
4. Allowance of salary to an acting partner.
5. Allowance for rent or residence to a residing partner.
6. Allowance for treating customers.
7. Allowance of certain articles of the trade to the partners for private consumption.
8. Allowance to a residing partner for maintenance of servants.
9. Apprentices not to be taken or dismissed without general consent.
10. Apprentice-premiums to be profits.
11. Rent, taxes, salaries, and all outgoings, to be paid out of the profits before division.

III. The points relating to the duties of the partners form a code of private regulations as to the conduct of each partner.

1. That the partners shall be true and just to each other.
2. And diligently employ themselves. (Or which partners shall take the management, and which be dormant.)
3. And communicate all partnership transactions to each other.
4. That they shall not engage in any other business.
5. That they shall not employ the partnership effects, except on account of the partnership.
6. Nor engage its credit.

7. Nor, without consent of the others, buy goods beyond a certain amount.
8. Nor against the request of the others transact business.
9. Nor give credit.
10. Nor lend its money.
11. Nor release or compound debts.
12. Nor sign bankrupts' certificates.
13. That they shall not draw bills, &c., except in the usual course of business.
14. Nor speculate in the funds.
15. Nor become bail.
16. Nor assign or withdraw their capital.
17. Nor do any act by which the partnership property may be taken in execution.

IV. The following may be termed the accounting clauses :

1. That proper books of accounts be kept.
2. That true entries be made by each partner.
3. That the books and partnership documents be kept at the place of business, and open to the inspection of the partners.
4. That the books be kept by the acting partner.
5. That all drafts, acceptances, &c., be signed by the acting partner, except in case of sickness or absence.
6. That all drafts, acceptances, or securities, be made and taken in the name of the partners, or upon trust for the firm.
7. That the bank of Messrs. —— be used.
8. That the cash-book be made up weekly.
9. That the cash-balances be paid into the bank weekly.
10. That all monies received by each partner be duly paid in.
11. That a general account, or rest and stock-taking, be made yearly or half-yearly.
12. That it be entered in the books.
13. That it be signed by each party, and be conclusive.
14. That the profits shall be divided in due proportions.

V. The clauses relating to the dissolution, and final settlement of the partnership accounts, are more important than any; inasmuch as the courts of equity will always act upon them, and in all things take them as their guide. They consist of the *Option* clauses and the *Sale and division* clauses.

In the event of the option not being accepted, and indeed in the usual course of closing a partnership, a sale of all the partnership effects takes place, or in some cases they are specifically divided, according to the provision in clause 14. Upon a sale, the realty should be sold as well as the personalty.

1. Power to dissolve on notice.
2. General account on dissolution.

Option clauses.

3. Valuation.
4. Option to the continuing partner to purchase the share of the discontinuing partner.
5. Bond to be given for payment of the purchase-money by instalments.
6. Interest.
7. Bond of indemnity to the discontinuing partner.
8. Assignment of the effects by the discontinuing partner or his representatives.
9. Covenant for further assurance.
10. That the retiring partner will not receive any of the debts assigned.

Sale and Division clauses.

11. Sale of the effects.
12. Debts to be paid.
13. And advances by either partner, with interest.
14. Division of the residue.
15. Apportionment of remaining effects and credits.

16. After apportionment, no partner to receive a debt due to the other.
17. General releases.

VI. The clauses relating to the disputes of partners are in general feeble, as the courts decline to interfere. They may be stated to consist of,

1. Expulsion clause.
2. Liquidated damages for breach of covenants.
3. Majority to decide differences.
4. Arbitration clause.

Partnership articles are either by a deed under seal, or simply an agreement. Substantially they are always in the form of a deed of covenants, and should therefore be under seal; because, in that case, their stipulations are binding on the representatives of the contracting parties, as specialty obligations, upon a breach of the covenants; and an action of covenant will lie, which is not the case unless the articles are under seal. There are but very few instances, however, in which the covenants of a deed of partnership can be enforced at law; and when the resort must be made to equity, an agreement only is sufficient. A better opportunity, however, for discussing the remedies of partners, both as between themselves and third parties, will presently occur. We shall therefore defer the observations we have to make till we examine the arbitration clauses, which partners have attempted to provide, as a substitute for the deficiencies of the law. The form of partnership articles is as follows:

THIS INDENTURE, made the 17th day of August, 1833, between A A [*first partner*] of , in the county of Middlesex, of the first part, B B [*second partner*] of , aforesaid, of the second part, and C C [*third partner*] of , aforesaid, of the third part. Whereas the said A A, B B, and C C, have mutually agreed to become partners in their trade or business of a , for the term and subject to the stipulations hereinafter expressed, NOW THIS INDENTURE WITNESSETH, That, in pursuance of the said agreement, each of them the said several parties doth hereby for himself, his heirs, executors, and administrators, covenant with the others and each and every of them, their respective executors, and administrators, in manner following, that is to say—

The clauses are then successively enumerated, and may be numbered for more convenient reference.

I. The clauses which relate to the commencement and terms of the partnership are,

1. *The nature of the business.*] The nature of the business may be simply stated as follows:

That they, the said A A, B B, and C C, shall be partners in the trade and business of a ——.

2. *The date of the commencement of the partnership.* } The commencement of the partnership should not only be stated in the articles, but the books should be carefully opened as of the same date. Where no time is fixed, the partnership will commence from the date of the articles.*

* Williams *v.* Jones, 5 B. & C. 108.

That the said partnership shall commence from the day of the date of these presents.

3. *The term and duration of the partnership.* A partnership, for the duration of which no time is fixed, is called a partnership *at will;* and it is dissolvable at any time, by either partner immediately upon notice. There is generally (as hereinafter) inserted a clause to dissolve at any time, on six months' notice by either party. In many cases, however, it is of the utmost importance, that the duration should be fixed, as where an inventor brings in a new discovery without a patent, and his partner is a capitalist who finds the means of carrying it into execution. As the inventor in such a case places himself in the hands of his partner, it is indispensable that that partner should not have it in his power to dissolve the partnership, as soon as he has made himself master of the secret.

Again, where provisions are to be made upon the death of a partner for the succession of his son or nominee, the term should be fixed; for a court of equity will not compel performance of an agreement, which may be dissolved the next moment. But if the term be fixed, this is one of the few covenants which a court of equity will enforce.

Notwithstanding that a term is fixed for the duration of the partnership, it is dissolvable by several incidents enumerated under the clauses relating to dissolution. It may be sufficient here to observe, that where the term of the partnership has elapsed, and the parties continue to trade as before, this continued partnership

is a partnership *at will*, and may be dissolved by any of the partners, at any time, and this notwithstanding a proviso in the old articles, by which the partnership was to be dissolved on twelve months notice.*

This and the preceding clause are usually combined in one form, as—

> That the said partnership shall commence on the 17th day of August, 1833, and continue for the term of 14 years, subject to the provisions hereinafter contained, for determining the said partnership.

4. *Style of the firm.*] The name or style of the firm is likely to become of more consequence hereafter, than it is at present, as it is seriously in contemplation that every firm, or at least firms consisting of numerous partners, should be subject to a registration.

At all times, however, it has been useful to have some fixed name or style. With this the invoices should be headed, and the bills, notes, and acceptances, may be signed. With respect, however, to third parties, any partner may bind the firm in his own name alone, upon a *bill* of exchange or by simple contract, if for a partnership transaction. Any partner may also release a debt; but the law will not permit one partner to bind his copartners by *deed*, not even if he signs the usual style of the firm, or his own name *for self and partners*. This is an anomaly that requires attention, for its consequences are most important, especially to persons who have been under the necessity of compounding

* Featherstonehaugh *v.* Fenwick, 17 Ves. 298.

with their creditors; for if the composition deed be not in the form of an actual release of the debt, it is not binding upon a firm, when signed by only one of the partners. Thus, all the common preliminary deeds of arrangement are of no validity, as binding any firm of creditors, unless it has been signed by all the partners of that firm, which rarely happens.

As between themselves it may be a breach of covenant for one partner to sign in the names of *himself and Co.*, or in his own name *for self and partners*, if by such a method one partner endeavours to suppress the name of his copartner. But if it be a breach of covenant, it seems to be one upon which no damages can be recovered at law, and to restrain which no court of equity will grant an injunction, unless, as Lord Eldon expressed himself, "there be a studied, intentional, prolonged, and continued inattention to the application of one partner, calling upon the others to observe that contract;" in which case,* his lordship stated, he should be under the necessity, either of awarding an injunction, or dissolving the partnership.

The clause is simply to the effect—

That the firm and style of the partnership be A, B, and Co.

5. *The place of business.*

That the said trade, or business, shall be carried on in the messuage, No. , &c., or in such other place as the said partners shall from time to time mutually agree upon.

* Marshall *v.* Colman, 2 Jac. & W. 268.

6. *The capital of the firm.*
7. *The capital which each partner is to bring in.*
8. *The share of each partner in the capital.*
9. *The ratio of the profits and losses.*

When a partnership is commenced, it is of the first importance to all parties that they should come to a clear and decided understanding, as to the pecuniary terms upon which they enter into partnership: and they should specify distinctly the *capital of the firm*,—the *proportions in which the capital is to be brought in*,—*to whom it is to belong*,—and *to whom it is ultimately to revert*. The books should then be opened strictly in accordance with these terms. Of all the stipulations of partnership articles this is the most important; and it is a singular fact, that in ordinary cases, this is one of the portions of partnership articles that is frequently very little attended to; and will, therefore, require a discussion a little more lengthened than may at first sight appear necessary.

First of all it is necessary to ascertain the meaning of the terms *Stock* and *Capital*, for there appears to be on this point also a misunderstanding between professional and commercial men.

The word Stock, in the mercantile meaning of the term, as used in accounts, comprehends *every thing** possessed by the firm at any given time. The Stock account contains upon its credit side all the lands, houses, leases, fixtures, engines, merchandise, and credits of the firm; and its debts and liabilities upon its debit side. At any moment when the accounts are made up, the balance between the credit and

* See Chapter II.

debit sides of the Stock account, is exactly the net property of the firm. This meaning of the word Stock is so well established among traders, and is in that sense so universally and without exception used in their accounts, at the head of which it always stands, that it is impossible to be shaken. And it is so used, not only in the mercantile world, but is adopted by Smith in his "Wealth of Nations," and by other political economists.

The meaning of the word CAPITAL is different from that of the word *Stock*. When persons enter into partnership it is usual to fix upon a certain sum, which shall thenceforth constitute the *capital* of the firm; and each partner brings in such a proportional part of this capital, and in such a manner, and in such a form, as may be agreed on between themselves. The sum, or the value of the effects which each partner brings in (usually, but not always) constitutes his capital, or capital stock as it is sometimes called, in the concern: And the united capitals of the partners constitute the capital of the firm.

The capital brought in, whatever it may consist of, is carried at a valuation or estimate into the Stock account, and thence distributed among the other ledger accounts.* The Stock, therefore, of a partnership *at its commencement*, is exactly equal to whatever capital the partners think proper to bring in.

At the end of a year's trading, or at any other time when a Rest is made, the debit side of the *Balance sheet* exhibits the gross property or stock of the firm, and its credit side exhibits its liabilities, and its balance exhibits the *net* property or stock of the firm at the

* See Chapter II.

time of this Rest. The net property or stock of the firm at the time of this rest, is exactly equal to the stock at the commencement, together with the amount of the profits;* or, in other words, the Stock at the time of the rest is exactly equal to the Capital *plus* the Profits undrawn. And upon a rest, when a balance sheet is made up, the partners ascertain their present stock and thereby determine their *profits,* which are the difference between the *stock* and *capital;* and having ascertained the profits, they can please themselves by sharing these profits exactly, which would leave the same capital remaining in the firm as it commenced with: or they may agree to share less, and so increase their capital; or they may share more and so reduce their capital, if they find it convenient so to do. It is clear then, that at any time, and, indeed, at all times whatever, the Stock of a concern is equal to its Capital together with the Profits undrawn, if the concern is profitable: but if it be a losing concern, then the remaining Stock is equal to the difference between the original Capital and the Losses which have been sustained.

The word Capital is used in opposition to the words Profit and Loss.

The word PLANT is a larger word than *Fixtures:* for in its narrowest signification it includes the engines, tools, and fixtures; but, in its more extended sense, it embraces the houses, shops, warehouses, leases, tools, engines, and fixtures of the concern; but it does not include the merchandise, be it raw material or manufactured goods. The Plant is sometimes, but improperly, called the dead stock, while the word stock, or

* See Chapter I., p. 29.

rather stock in hand, is sometimes used to denote the goods manufactured in hand: but the word stock in these improper significations has never a place in the accounts.

The political economists take a view of the word capital slightly differing. Smith, in his "Wealth of Nations," says, that—The general stock of any country or society, is the same with that of all its inhabitants or members; and, therefore, naturally divides itself into the same three portions.

I. That portion which is reserved for immediate consumption, and of which the characteristic is that it affords no revenue or profit, viz., 1. Food, clothes, &c. 2. Dwelling-houses, and the like, which he also includes under this first division.

II. *Fixed capital,* which affords a revenue without changing masters, as—1. Machines and instruments of trade. 2. Profitable buildings, shops, and the like, different from dwelling-houses. 3. Improvements in land, &c. 4. Acquired and useful abilities, as education.

III. *Circulating capital,* which affords a revenue only by circulating or changing masters, as—1. Money. 2. Stocks of provisions for sale. 3. Produce or articles on hand not yet made up. 4. Ditto made up and completed for sale.

The attention of the courts had not been directed to this subject, till the case of Crawshay *v.* Collins* drew it in a more than ordinary degree. The anxiety of Lord Eldon to settle the point satisfactorily, caused an unusual number of references to the master and hearings upon the point. In that case three persons, Collins, Noble,

* 2 Russ. 325.

and Boughton, carried on the business of pump and engine manufacturers in partnership together. In 1803, a commission of bankruptcy issued against Noble: and, in 1804, the bill was filed by his assignees, claiming three-eighths of the profits, as Noble's share of the business, which remained unaccounted for at the time of the bankruptcy, or which had accrued since, and also of two patents, and the profits derived from them. Two decrees were made directing an account of the profits, accrued before and since the bankruptcy: and the master made two reports upon these decrees, and found —'That it was originally agreed, that the capital of the trade, consisting of the leasehold premises, the tools and utensils of the trade, and of the money then advanced by the partners, should be estimated at 5333*l.* 6*s.* 8*d.* That this capital, in the year 1802, was diminished by agreement one-fifth part, each partner drawing out that proportion of his share; and that this reduced the capital to 4266*l.* 13*s.* 4*d.* He found also that the *stock in trade and capital* of the copartnership, on the 7th of October, 1803, consisted of the leasehold shops and buildings (wherein the copartnership was carried on), and of the tools and utensils, and goods manufactured and unmanufactured, which were then altogether of the estimated value of 3053*l.* 8*s.* 0½*d.*' Collins, one of the solvent partners, took an exception to this report, stating that the stock in trade and capital ought to include all the debts due to the partnership and cash in hand, deducting the debts due from the partnership, and certain estimated deductions for wear and tear, &c., and that it amounted to 8304*l.* 13*s.* 6*d.*

When the case came on again, the court did not accede to the report of the master, and in consequence of an

elaborate argument respecting the distinction between capital and stock in trade, directed him to review his report: and he was further directed to ascertain whether any and what profits had been made by means of the capital and stock in trade of the copartnership.

He then made another report, in which he stated, that at the commencement of the partnership it was agreed, that the capital should consist of certain particulars, amounting together to the estimated sum of 5333*l.* 6*s.* 8*d.*: comprising the leasehold at 1200*l.*; tools, &c. 1591*l.* 7*s.* 4*d.*; use of certain patents, valued at nothing; and cash 2541*l.* 19*s.* 4*d.* And he further found, that at the time of the bankruptcy of Noble, the capital was of the value of 4266*l.* 13*s.* 4*d.*, which was made up of

	£	s.	d.
Leasehold	1200	0	0
Tools	480	0	0
Unmanufactured goods .	667	7	0
Manufactured ditto . . .	663	14	9
Goods in a state of manufacture	42	6	3
Cash	350	17	0
So much of the debts owing to the partnership as amounted to	682	8	4*
Use of patent on which no value was set . . .			
	4266	13	4

He found also that the five first items, together with the patents, constituted the stock in trade. He found that the credits of the concern or debts due to it amounted to 6572*l.* 1*s.* 11*d.*, and the debts of the concern to 2682*l.* 11*s.* 9*d.*

* Query—862*l.* 8*s.* 4*d.* This error runs through the report.

The master here evidently had attained to the mercantile idea of the Capital, but his idea of the Stock was confined to what traders call the Plant and goods; which are, indeed, sometimes called the Dead Stock and Stock in hand; while the exception taken by Collins was, according to the true mercantile meaning of the word, Stock; but in that case it was not necessary to go further into the point. Among merchants, the meaning of the term is clearly understood, and will, no doubt, be adopted by the courts of equity, whenever it shall be properly brought before them.

Upon the commencement of a partnership, the first thing with respect to the capital is to fix what shall be the capital of the firm; and the next to determine what part of this capital each partner is to supply. And afterwards come two other important considerations, viz., 1. What share each partner is to have in this capital of the firm (for it does not follow that he is to have that which he brought in, for some of it may be simply a premium for admittance); and, 2. What share he is to have of the profits, or bear of the losses.

We pass on to the capital of the firm, and the share each partner is to bring in.

It is a universal principle among merchants in keeping their books, to affix to all the articles of stock their values in money, for without this they would be unable at any time to ascertain their profits and losses. And as estimates and allowances are yearly made for wear and tear, for accidents, for the deterioration of value of the leases and patents by the effluxion of time, for funded property by the fluctuations of the funds, and the like; the whole system depends upon this prac-

tice of valuation; and is no less adopted in the progress of business than at its commencement.

If, upon the commencement of a partnership, each partner brings in his share in money, the value of it is known; but if the partners bring in goods or other articles, a valuation or estimate of each article must be made; and every item which a partner brings in, whether it be land or a lease, tools or merchandise, bills or credits, is to be taken and adopted by the firm at its valuation or estimate. All these things are then handed over into the stock of the partnership, the Stock account is credited with them, and if they do not make up the share of the capital the partner is to bring in, he must advance the difference in cash. And then come the further considerations, of what is to be the capital of each partner, that is to say, in what proportion each partner is to be interested in the capital of the firm, and also in what proportion each is to be interested in the profits.

If any one of the partners brings in more or less than another, it must immediately upon the opening of the books be ascertained, why one brings in more than another.

These are matters of such vital importance, and are so often neglected or misunderstood, and accounts are so constantly getting into confusion, and disputes arising, from such neglect or misapprehension, that we shall be excused if we give a little more than ordinary attention to this part of the subject, and illustrate it by a few examples.

1. If each of two partners, A and B, possessed of equal skill and advantages, brings in 2000*l.* cash. The accounts will be opened without any trouble in the

ledger, by crediting the Stock account with 4000*l.* and making Cash Dr. to Stock for the same amount; and in the private ledger the Capital account will be debited with 4000*l.* and the separate accounts of A and B will be credited with 2000*l.* each. If no different arrangement is made, A and B will be each entitled in equal shares in the profits: and if this 4000*l.* is intended to be retained in the firm as capital, it will upon each rest be left there still; and all the surplus beyond the 4000*l.* will be carried in moieties to the credit of A and B respectively as profits.

2. But let us suppose A to bring in 2000*l.* and B only 1500*l.*, and they still purpose to share the profits in moieties. It is now a matter of necessity to come to an understanding upon what terms A brings in 500*l.* more than B. Where a question of this nature comes to be settled by the courts of equity, the intention of the parties is made the rule upon which the court determines their respective interests in the capital. If the parties have been so imprudent (as is very commonly the case) as to leave such a material point undetermined, the court can only ascertain it by a reference to the books, or (if the books have not been properly opened), by an examination of the acts of the parties as they appear by their subsequent transactions; and the case would possibly be sent to a jury to ascertain their intentions. Nor would the parties have much reason to complain, where their own imprudence had created the difficulties. Generally, however, in a case of this sort, if any distinguishing circumstances appear, as if B had greater skill than A, it would be presumed that upon that account A brought in a greater share of capital, and the agreement to share the

profits equally, would be considered evidence of an intention that they were to be also entitled in equal shares to the capital, and the court would probably determine that they were each entitled equally, and that of the whole capital, viz. 3500*l.*, they were entitled to 1750*l.* apiece: or it might, upon the circumstances, be determined that they were entitled only in the sums they brought in, viz. A in 2000*l.* and B in 1500*l.*; but all this would simply be matter of intention, to be decided upon a complete view of all the circumstances. But it should have been distinctly stated in the agreement, and the books should have been opened in conformity.

3. If it be the intention of the parties that the additional 500*l.* of A should be only a temporary loan, leaving 3000*l.* as the capital of the firm: then in the *private ledger* the Capital account should be debited with 1500*l.* apiece to each of the partners, while the Stock account in the *general ledger* would be credited with the whole 3500*l.*, and debited to A in 500*l.*, leaving the *net* stock as 3000*l.* in conformity with the private ledger, and the separate account of A in the general ledger should be credited with the 500*l.* loan, and the rate of interest it is to bear should there be stated.

4. If, however, it be the intention of the parties that the capital should consist of 3500*l.*, then A will have advanced 1750*l.* for himself, and 250*l.* which B is unable to procure. For this 250*l.* B may be made D^{r} to the firm, and A C^{r} in the general ledger, and each credited in the private ledger with 1750*l.* But if the partners do not choose to let this appear in the ledgers, but to treat it as a private transaction between themselves, then may B give to A his note or bond for the 250*l.* so advanced

by him; and an action upon this note or bond by A would be maintainable at law, notwithstanding the partnership.*

5. But if it is determined that the capital is to be 4000*l.*, then A has paid up his 2000*l.* and B is deficient by 500*l.*; the Stock account in this case would be credited with the 3500*l.* cash paid in, and with 500*l.* due from B.

6. In a case in which A brings in all the capital, and B brings in only his skill and labour, or some invention, it is of no less consequence that they should thoroughly understand each other, for the labour or invention of B may be considerably more productive and valuable than the capital of A. Partnerships of this nature not unfrequently occur, where some patent has been obtained, and is worked under the loose arrangement that the capitalist shall find the money requisite, and the inventor shall find the invention and skill, and the profits be shared equally, or in certain proportions. Upon this loose arrangement it can hardly be long before the question arises of how far the inventing partner is entitled to any share of the capital originally brought in by the monied partner, or since accumulated. This will occur in a most embarrassing form upon a dissolution, whether the partnership has been successful or otherwise. For such partnership can rarely stand in the position in which they began, for the capital either rapidly increases or diminishes. If the partnership is successful, all the original capital may have been lost or sunk in preliminary matters, or even worked up into the goods delivered out, or it may still exist in determined specific chattels, which, as well as the patent, may be daily

* Venning *v.* Leckie, 13 East. 7; Gale *v.* Leckie, 2 Stark. 107; 7 Bing. 714.

growing less valuable by the efflux of time, while the accumulated capital may be tenfold the original, consisting of debts due, machines, goods on hand, or property purchased subsequently to the commencement: and to whom the original sum and the accumulations belong is a question of uncertainty, if no arrangement has been made. Again, if the partnership is unsuccessful, and great losses are sustained, it is a question more embarrassing by whom the losses are to be sustained; and whether all the partnership property, including the original capital of the capitalist, is to be entirely sunk before the inventor is to share the losses, or whether the capitalist is to be credited with the capital he brought in, or with interest upon it, as a set-off against his proportion of the loss. The proper way of dealing with a case of this kind is to credit the capitalist partner in the outset, as against the firm, with the sums advanced, and upon the one hand allow him interest upon his advances, and on the other hand to allow the inventor partner a fixed salary: both the interest and salary to be paid before the profits are shared. If no arrangement be made upon the subject, the courts, in making up such accounts on a dissolution, will allow neither salary nor interest; but it seems that they will credit the capitalist with the money he brought in, and after the liquidation of all the debts and the money so brought in by the capitalist, divide the surplus equally between them. But if this be a general rule, upon the other side it must be held, that in case of loss the capitalist should be allowed his capital before the losses are determined; which, in the event of the debts being about double his capital, would leave this capital as a set-off against his losses, and shift all the payments to be actually made

upon the inventor, allowing him no kind of compensation for his invention, time, and labour. The real question, however, ought to be, whether the sum advanced by the capitalist is so advanced as capital, or as loan. If the latter, he is entitled to a repayment and set-off; but if the former, it belonged to the firm, and should be sunk.

It may be further observed, that in all concerns in which unequal capital is brought in, not only the points above, with respect to the shares of the partners, should be attended to, but it is of especial consequence to determine whether interest is, or is not, in the first place to be paid upon the capital before a division of the profits. If no arrangement is made upon the subject, no interest will be allowed by the courts, unless the intention is manifest, but the profits will be divided according to the agreement, without heeding the inequality of capital.

7. We will now put a case of three partners, which will show the importance of all the four clauses now under consideration. Suppose A, a monied partner, who proposes to be dormant, and take no active part in the matter, advances 3000*l.*—B, who proposes to be an active partner, not devoting his whole time, advances 2000*l.*—and C, who is to be an active partner, devoting his whole time, brings in a secret worth 1000*l.*, but no cash; and they agree to share the profits equally, and that C is to give up the secret to the firm, and to be credited in its books with one-sixth of the capital, while A and B are to be credited with three-sixths and two-sixths respectively. Supposing that it is contemplated, that the secret will, after the commencement of the partnership, not be of

any pecuniary worth, so as to hold a place or be taken into consideration in the Stock account; having recited these circumstances, the capital clauses might be drawn in the following form, which exhibits the different varieties:

6. That the capital of the said partnership shall consist of the sum of 5000*l.*
7. That the said capital shall be brought into the said business by the said A and B, in the following proportions: that is to say, 3000*l.* being three-fifth parts thereof, by the said A, and 2000*l.* being the remaining two-fifth parts thereof by the said B. Which said sum so to be advanced by the said A and B respectively, shall be paid by them into the bank of Messrs. at aforesaid, to the credit of the said partnership, on or before the day of ; and that no part of the said capital is to be paid or advanced by the said C.
8. That the said partners shall be entitled to and interested in the said capital, stock, and effects of the said partnership, in the following proportions: that is to say, the said A in one-half, the said B in one-third part thereof, and the said C in one-sixth part thereof; and that they shall be considered as creditors of the said partnership, in respect of such capital, and shall be allowed interest for the same, after the rate of 5*l.* per centum per annum.
9. That the said partners shall be equally entitled to the profits of the said business; and that all losses, happening in the concern of the said business, shall be borne by them in equal shares or proportions (unless the same shall be occasioned by the wilful neglect or default of any one or more of the said partners, in which case the same shall be made good by the partner or partners, through whose neglect the same shall happen).

10. *The premium or consideration for the admission of new partners into an old firm.*

11. *The repayment of part of the premium upon the death of either partner, or ill-success of the concern, within a limited time.*

12. *The valuation of the old stock.*

These clauses, if introduced, commonly precede the two last above, and relate to the admission of a new partner into an old firm. Upon an event of this nature, the first question of importance is, whether any part of the sum to be brought in is paid as a premium, and is to be abstracted as such by the old partners. If so, certain provisions and arrangements should be made, in case of the death of either of the partners, or ill-success of the concern, within a limited time. It may be here also observed, that if a partner, by the articles, agree to advance any sum as part of the capital, that sum will belong to the firm as *debitum in præsenti solvendum in futuro;* as where a *sole* trader agreed, in consideration of a sum payable by instalments, to take into partnership two persons for a term of eighteen years, and became bankrupt in five months, it was determined that the bankrupt's assignees were entitled to receive the whole of the remaining instalments.*

Whenever an old firm takes in a new partner, a variety of questions arise, which it is of the utmost importance to have adjusted, before the books are opened.

First of all, it is necessary to close the old books and open new ones,† or at least to balance and close

* Akhurst *v.* Jackson, 1 Sw. 89.

† In the case of Devaynes and Noble, one of the principal points arose from an inattention to this circumstance, and cost the parties a litigation in chancery for upwards of twenty years, at an expense of upwards of 100,000*l.*, and the suit has just been compromised.

all the old accounts, and to open the new accounts in such a manner, as to render mistake impossible, as to any questions that may arise between the old and new firm, or between the new firm and the creditors of the old one.

The next thing to which the old partner should direct his attention is, to be the most scrupulously certain, that the old partnership effects are not brought forward at a value beyond their actual worth. For it is a great mistake to suppose, because an old partner admits a new partner at 10,000*l.* brought in, that therefore the old partnership effects are to be set down at the same estimate or value; for a new partner is admitted at a certain sum, not because there is a like sum actually invested in the old firm, but generally because the estimated profits to be reaped by the incoming partner renders it to him a desirable investment; and the personal services of the new partner, or the extension of the business, or even the actual insolvency of the old firm, renders it desirable to them to obtain the advantages offered, or to relieve themselves from their difficulties by giving up to the incoming partner a large share of the profits. Through inattention, however, it is not unfrequent that the lease, plant, and effects, are taken at an estimate far beyond their value; and the real grounds upon which the partnership is entered into, are omitted to be stated. This is extremely unsatisfactory, and even dangerous, in case the new partnership should prove unsuccessful, and become involved; for it may be then open to the new partner, or if he die, to his executors, to resist bearing his proportion of the losses, upon the allegation of a fraud committed upon the incoming partner at the commencement.

It is equally, and perhaps more important, to the incoming partner, who is about to invest his money, to understand accurately the state of the old concern, and the terms upon which herisks his capital.

The balance sheet of the old partnership should be accurately made up by the old firm, and investigated by the incoming partner, and a valuation or an estimate should be made, and the items carried forward, through the new waste-book and journal, to the stock account, at their actual value.

The different items of plant and cash may be easily arranged; but the debts and credits of the old firm require the particular attention of the incoming partner. Unless they are adopted by the new firm, the incoming partner is not subject to the liabilities; but they remain a burden upon the old firm, and retiring partners, if any. It is not a very unusual way, and a way especially recommended by accountants, to leave out both the liabilities and the credits of the old firm, and not suffer them to be brought in at all. The credits, however, that is, the debts due to the old firm, is the point that requires the deepest attention; and it should be especially observed, whether the old firm has ever kept what is called a Bad debt account. For observations upon which, see page 68. If no allowances have been made during the past years, for bad debts, the incoming partner should make a calculation, and deduct so much per cent. for each past year, from the amount of sales appearing in the books; for, by neglecting this most important deduction, many a house has been actually insolvent, while the amount of its stock, apparent upon its books, gave it a very flourishing appearance. If a proper allowance has been made,

the credits may be taken and adopted at a valuation; upon which, the whole amount of the credits should be carried to the credit of the stock account, and the estimated deduction for the bad debts be carried to its debit.

After these arrangements have been made, they should be especially mentioned in the partnership articles, or at least care should be taken to have all the items, so adopted, entered at the beginning of the books, as adopted by the firm; and the inventory should be signed by each partner, which may be done in the journal or in the rest-books, or in both; which will for ever close disputes, except in cases of fraud. It is rare, however, that partnership articles are ever framed with much attention to these particulars, or that any thing further is inserted, than a few desultory clauses, that the stock, plant, lease, debts, &c., shall be taken at a valuation.

The clauses relating to the premium may be to the following effect (though it may be remarked that it is preferable, in many cases, to make the premium one of the considerations of the deed, instead of inserting it here as a clause):

10. That 1000*l.*, part of the said sum of 10,000*l.*, shall, upon or before the day of next ensuing, be paid by the said [*incoming partner*], to the said [*old partner*], as a premium or consideration for the admittance of the said [*incoming partner*] into the said partnership; and that the sum of 9000*l.*, being the residue of the said sum of 10,000*l.*, shall be advanced and paid into the said bank, by the said [*incoming partner*], on or before the said day of and shall be taken and deemed the capital of the said [*incoming partner*].

11.* That in case the net profits, arising from the said business, shall not, at the end of the first three years from the commencement of the said partnership, amount to the sum of *l.*, [*the average value of three years*], then the said [*old partner*] shall repay to the said [*incoming partner*] such a sum of money as will make the profits of the said [*incoming partner*] equal to one-third part thereof. That if the said [*incoming partner*] should die before the expiration of the first three years of the said partnership term, then the said [*old partner*] shall pay to the executors or administrators of the said [*incoming partner*] the sum of 500*l.*, being a moiety of the said premium. And in case the said [*old partner*] shall die within the space of two years from the commencement of the said partnership, then the executors or administrators of the said [*old partner*] shall pay to the said [*incoming partner*] the sum of *l.* for his own use and benefit.

[*The valuation and adoption of the old stock, is commonly provided for as a deduction from the capital of the old partner, in which, after stating the capital of the old firm, it runs*]—

Provided that out of the said sum of *l.* [*the whole capital*], the sum of *l.* shall, within one calendar month after the commencement of the said partnership be paid to the said [*old partner*], as and for the price and purchase-money of the stock in trade now in his possession; and which said stock in trade, it is hereby agreed, shall be purchased by the said partnership at the price aforesaid.

It is submitted that this clause is, in many respects, objectionable in the looseness of its construction,

* This is a clause more common in solicitors' articles, than any other.

and more especially in the obstacles that it would throw in the way of correctly opening the books; which must, if that clause is adopted, be generally opened with a mistatement of the facts, and a bungling kind of adjustment and pretended payment; for, in a day or two after the commencement of the business, part of the stock may be disposed of before the purchase-money for it will be payed; and indeed, nineteen times out of twenty, the necessary adjustment, and pretended form of payment, will not take place; and in the books, it is of great consequence that no mistatements or pretended payments should be inserted, but that they should state, simply and plainly, the very facts as they occurred. A contrary course overthrows, at the very onset, the honest boast of many a trader, that he can swear by his books. The clause sometimes covenants that a valuation shall be made by two referees, and the stock shall be taken at their valuation; but we would venture to recommend, that in all instances, the valuation should be made beforehand, and the result specifically stated, and particularly with attention to the debts and credits of the old firm, in some such form as follows:

12. That the lease, vessel, plant, fixtures, merchandise, credits, and all other the effects hereinafter mentioned of the said [*old partner*], heretofore employed in the said trade or business of a , shall be brought into the said copartnership, and be taken and adopted by the said copartnership, at the sum of 7500*l.*; that is to say, the said lease of the said premises in Street, at the sum of 1000*l.*, the said vessel called the Argosy, at the sum of 2300*l.*; the plant, engines, fixtures, and tools, at the sum of 1633*l.* 6*s.* 8*d.*; the merchandise at the sum of 1366*l.* 13*s.* 4*d.*; the credits, that is to say, the debts due to the said [*old partner*], in

respect of the said business, amounting altogether to the sum of 1735*l.* 2*s.* 7*d.*,* set forth in the first schedule hereto annexed, at the sum of 1200*l.*, making altogether the said sum of 7500*l.*; and all which said stock, lease, vessel, plant, fixtures, merchandise, and credits, shall be taken and adopted by the said firm, at the said sum of 7500*l.*, as so much of the capital to be brought in by the said [*old partner*]; and that the residue of the capital sum of 9000*l.* agreed to be advanced by the [*old partner*], viz. 1500*l.*, shall be paid into the said bank, by the said [*old partner*], on or before the said day of 1839

If the debts are to be adopted, the form may be—

That the debts due from the said [*old partner*], in respect of the said business, and which are set forth in the second schedule hereto annexed, amounting altogether to the sum of 1327*l.* 3*s.* 4*d.*, shall be paid by the [*new firm*]; but that all other the debts of the said [*old partner*], in respect of the said business, which are not comprised in the said schedule, shall not be taken as part of the liabilities of the said [*new firm*], but shall be paid by the said [*old partner*].

If the debts are taken at 1327*l.* 3*s.* 4*d.*, and the old partner is to bring in 9000*l.*, he would have to pay in cash, not 1500*l.* as above, but 2827*l.* 3*s.* 4*d.*; for the stock he brought in, viz. 7500*l.*, would be diminished by these liabilities.

Then would follow the clauses, stating the shares of each in the capital of the new firm.

* If this arrangement is adopted, these credits should be entered upon the credit side of the stock account at 1735*l.* 2*s.* 7*d.*, and the difference between it and this 1200*l.* allowed, viz. 535*l.* 2*s.* 7*d.*, should be entered in the debit side before the bad debt account is opened.

13. *The several rights of the partners in realty, or any specific property.* In many concerns it is necessary to introduce clauses by which the possession of real estate by the firm is to be regulated; and different items of property, not comprehended under the term "goods and chattels," are to revert to one of the partners.

The matters, comprised in this portion of the subject, divide themselves into two branches. The first concerns the actual possession of realty, brought in and adopted, or subsequently purchased, by the firm; and the second concerns realty and such other chattels as are not to be specifically taken by the firm, but only to be hired by it, or lent to it by any of the partners.

If the latter only is intended and a partner proffers the use of a lease, or land, or the like, it should be accurately stated: it should never be entered in the stock account as belonging to the firm; but it should be distinctly treated as hired by the firm, and a rent distinctly paid for it. The point to be attended to is, that a lease, or land, or other chattel so treated as hired, will not belong to the joint estate of the firm, but to the separate estate of the partner; and in the event of bankruptcy, it would pass to the separate creditors of that partner, and not to the joint creditors of the firm.

One of the great principles of partnership among merchants and accountants is, that the capital brought into, and adopted by the partnership, whether it be realty or personalty, belongs to the FIRM, and not to the person who brings it in; and that the partners are simply D^{rs} or C^{rs} of the firm for their shares of the balance.

But the views entertained upon this subject by the courts are strangely confused. The decisions, which the courts have come to, have been bent as much as possible to bring them into accordance with the customs of merchants. But these decisions are not deducible from the principles, from which they are professedly deduced. Mr. Collyer, in his work on Partnership, has treated successively of the rules of law upon the possession of property by a partnership.

I. The first rule of the courts he thus states* "In 'the words of Lord Hardwicke, the partners themselves 'are clearly joint-tenants in the stock and all effects. 'They are seised *per my et per tout.*'—(1 *Ves.* 142) 'However, though they are joint-tenants of all the 'partnership stock during their lives, yet, at least in 'such part of it as is moveable, there is no survivorship, 'either at law or in equity. Lord Coke (*C. Litt.* 182.) 'in commenting upon a passage of Littleton, in which it 'is said that the right of survivorship shall hold between '*joint*-tenants of things personal as well as things real, 'observes, that 'an exception is to be made of two joint-"merchants; for the wares, merchandises, debts, or "duties, that they have, as joint-merchants or partners, "shall not survive, but shall go to the executors of him "that deceaseth: and this is *per legem mercatoriam*, "which is part of the laws of this realm for the advance-"ment and continuance of commerce and trade, which "is *pro bono publico;* for the rule is, that *jus accrescendi* "*inter mercatores pro beneficio commercii locum non* "*habet.*'

'It seems clear that at the time Lord Coke wrote, the 'distinction between merchants and *traders* in general

* Page 64.

'had been fully established. It is probable, therefore, 'that in this passage he only refers to merchants,* pro- 'perly so called; namely, those who export the native 'products and manufactures of the kingdom or her colo- 'nies, to foreign climes, or import the commodities of 'different countries into this kingdom. But however this may be, Lord Keeper Harcourt observed, 'that in "his time, the custom of merchants was extended to *all* "traders to exclude survivorship, and the custom so "extended has never since been contravened."

As partners are possessed *per mi et per tout* of the partnership effects and as the action at law survives to the survivors, to that extent the custom of merchants seemed to countenance an analogy to the joint-tenancy known to the law of England. But the custom of merchants required, that upon the decease of a partner, his interest in the effects of the firm should not survive to his partners, but to his representatives; and to this extent the courts were compelled to modify their hasty assumption, that a partnership was a joint-tenancy; for, unless they did so, there would have been an end of all partnership and joint trading in the realm. And hence the courts arrived at the extraordinary conclusion, 'that a partnership is a joint-tenancy without benefit of survivorship, as between the partners themselves, but with survivorship in regard to third persons, who may sue and be sued by the survivors.'

II. The second rule laid down is,—'That each of the 'partners has a *specific lien* on the partnership stock, not 'only for the amount of his share, but for monies ad-

* N.B. A merchant differs from a wholesale dealer in that the former keeps no continuous stock of any particular kind, which the latter does, inasmuch as he trades in some particular kind of goods.

'vanced by him beyond that amount for the use of the 'copartnership.' At the same time, as Lord Hardwicke observed, "When an account is to be taken, each is "entitled to be allowed against the other every thing "he has advanced or brought in as a partnership trans- "action, and to charge the other in the account with "what the other has not brought in, or has taken out "more than he ought; and nothing is to be considered "his share but the proportion of the residue on the "balance of the account."*

This is an attempt to bend the law of lien in such a way as to do justice between partners. In the case of Skipp *v.* Harwood † next cited by Mr. Collyer, Harwood and Skipp were partners in the trade of a brewer, and Harwood being indebted to his sisters, gave them a warrant of attorney to confess judgment for securing the debt. The sisters entered up judgment, and by execution sued out thereon the sheriff took the separate effects of Harwood, and also one moiety of the partnership goods, which at the time of the seizure were in Harwood's custody, and delivered back a moiety thereof to the other partner; and the sister suffered Harwood still to keep the goods taken in execution, and to trade with them; the judgment being given by him to his sisters to protect his goods against other creditors. Upon a bill by the solvent partner to account, Lord Hardwicke said, "I shall consider the sisters as partners with Skipp, and Harwood as their agent; and shall make them parties to the account. It is no objection that the goods taken in execution have been since frequently changed, for the specific lien which the other partner had on those goods devolves

* West *v.* Skip, 1 Ves. sen. 142—*Exp.* Ruffin, 6 Ves. 119. † 2 Sw. 586.

on those which have been taken in the place thereof, and always continues. And so it is in the case of a mortgage of stock and goods in trade; for in such case, if the lien was to fall on the goods in trade when the mortgage was made, and not on those taken afterwards, the trade must stop."

Upon this case we may observe that the proper conclusion was come to; yet it seems to have been arrived at upon very different principles from those from which an accountant would have deduced it. An accountant would have taken the accounts of the firm in the usual way, as if the firm was itself a person or a kind of corporation, and the partners were merely creditors of the firm. And when he had wound up the accounts, and settled the liabilities of the firm, he would have credited each partner with his capital and profits, and then have struck a balance in the usual way as between each and the firm, thereby ascertaining the debt due from the firm to each. He would have taken it as a matter of course that the goods brought in succeeded to the goods delivered out, not upon the illogical principle, that if it were not so the trade must stop; but simply because he would have regarded the firm as a distinct impersonification, and considered Harwood's *pecuniary* interest in the concern as the interest of a creditor of it, which he was at liberty to mortgage, sell, or subdivide into inferior partnerships, and deal with just as he thought proper, so long as he himself faithfully performed the personal duties of a partner, and no new parties were introduced to interfere in the business. In fact, he would all along have regarded Harwood as only a creditor for a floating balance due from the concern: and this view, indeed, is expressly recognised in the courts of law, by Lord Mans-

field, in his judgment in the case of Fox *v.* Hanbury,* "that *inter se* each partner has a claim not to any specific share or interest in the property *in specie*, but to the pecuniary balance which shall be found due to him upon the final adjustment of the accounts after the conversion of the assets and the liquidation thereout of all the claims upon the partnership." In the courts of equity it had been long practically established,† but it never appears to have been deduced by the courts from any fundamental principles, but regarded rather as a matter of convenience.

The courts, so far from recognising the principle of accountants, have clung to the notion that a partnership is a joint-tenancy, and to render it practicable have admitted these two amendments—1. 'That, upon the death of a partner, his share of the stock does not survive to his copartners, but devolves to his representatives, who thereby become, both at law and in equity, tenants in common with the surviving partners;' and, 2. 'That, upon the death of a partner, though his interest in the stock does not survive, yet the right of action survives.' But, in fact, these two incidents are not logically deducible to this extent from any principle or definition of partnership, legal or mercantile; but are simply approximations to the customs of merchants which have been conceded by the courts, as without them all partnership trading in the kingdom must have ceased. And they have taken the form above as the most convenient emendations of the rude notion that partnership was a joint-tenancy.

But be this as it may, both the law of the land and the custom of merchants arrive at the same conclusion—

* Cowp. 445. † See *infra*, p. 132. In re Wait, 1 Jac. & W. 608.

That *inter se* there is no survivorship, and that the property of a deceased partner, whether it be simply a pecuniary interest in the balance, or whether it be an actual right in the effects themselves, devolves upon his representatives, who have a right to receive from the firm the share of the deceased. But the legal and mercantile notions are widely different from one another; and as different cases have come before the courts, they have been compelled from time to time to qualify and modify more and more, and, in fact, to introduce some indefensible principles for the purpose of meeting the wants of the commercial world.

III. The next questions are —" Does the share of a deceased partner in *realty* survive to his partners, or descend to his representatives? and if to the latter, does it go to his real or personal representatives?" In other nations, where the distinction of realty and personalty is unknown, there can be no difficulty in this question, nor, indeed, is there among accountants. They look upon all property *brought in and adopted*, as the property of the firm, and the partners as creditors of the firm for the ultimate balance; and as the firm is a debtor to them, it must simply pay its debts, and for that purpose any real property it possesses must be sold. But if the property was not brought in and adopted, then it belonged to somebody else, be he a partner or a third party, and the case is treated as if the firm had only hired it of him. The question with them is simply a matter of fact, Whether the property was brought in and adopted, or only hired.

Such is the solution of an accountant. At law, when property has been purchased by the firm, all *goods and moveables* are at least treated as belonging to it.

In the case of a *lease,* the courts have gone to the extent that, if one or more partners take the lease in their own names for partnership purposes, or with the money of the firm, they are to be considered as trustees for the benefit of the partnership.* But with respect to *realty* purchased by the firm, or brought in, the difficulties of the law have been felt in the most embarrassing form.

As a firm has never been recognised as capable of possessing real property in its mercantile character as a kind of corporation, whenever it has chanced to purchase realty, the realty is held to vest in some person or other, and would legally pass to the real representatives of that person, and, in general, be subject to dower. The courts have not met these difficulties in a way at all satisfactory; but to evade them the doctrine of conversion has been introduced, and the cases have been always argued upon the question, whether land purchased by or belonging to a firm, is to be considered as equitably converted into personalty, or whether it is to be considered as retaining its quality of realty; and upon the solution of this question is made to depend the solution of the other, whether, in fact, the share of a deceased partner passes to his personal or real representatives.

When partners purchase real estates for partnership purposes, it has not been unusual to have it conveyed to them as tenants in common, to avoid the survivorship, which would be properly the consequence if conveyed to them as joint-tenants. In this respect, the courts have endeavoured to assist

* Forster *v.* Hale, 5 Ves. 308.—*Ib.* 1 Hov. Suppl. 418.

by construing even a joint-tenancy, clearly established by the words of the conveyance, a tenancy in common, so as to meet the intention of the parties that there should be no survivorship.

There are several cases relating to this part of the subject, which have been decided in the courts of equity, and they have at length arrived at the same practical conclusion which an accountant would have attained, but on very different principles. The cases alluded to are Jackson *v.* Jackson,* Hall *v.* Digby,† Lake *v.* Craddock;‡ in all which certain parties became possessed of lands as joint-tenants, either for the express purpose of carrying on trade in partnership, or who, being joint-tenants, subsequently entered into partnership; and the court held that, notwithstanding the expressions making them joint-tenants, the dealing in partnership with the effects was a severance of the joint-tenancy—that they became, in equity, tenants in common—that there was no survivorship—but that the representatives of a deceased partner were entitled to his share. Nothing, perhaps, can set in a clearer light the futility of the notion, that a partnership is a joint-tenancy of any kind whatever; for in the case of *personalty*, a partnership is construed to be a joint-tenancy, but without benefit of survivorship (which is its chief incident); and in the case of *realty* brought in, partnership becomes *ipso facto* a severance of a joint-tenancy.

In the case, however, of Morris *v.* Barrett,§ a testator devised the residue of his real and personal estates to his two sons as joint-tenants. The two sons, after their father's death, and during a pe-

* 7 Ves. 535.—9 Ves. 591.—2 Hov. Suppl. 66. † 4 Bro. P. C. 224.
‡ 3 P. W. 151. § 3 Y. and J. 384.

riod of twenty years, carried on the business of farmers, with such estates, and kept their monies arising therefrom in one common stock, and with part of such monies purchased an estate in the name of one of them, but never in any manner entered into agreement respecting the farming business, nor ever accounted with each other. It was held at the death of one of them, that they were joint-tenants of all the property that passed by the will of their father, but were tenants in common of the after-purchased lands: which, being interpreted into the language of merchants, means, that the original estates were not brought into the firm; or, in other words, that there was no partnership between them in the original property, but only of the after-purchased property.

As neither the custom of merchants nor the courts of equity admit survivorship in lands held for the purposes of trade, the other part of the question is, Whether, upon the death of a joint trader, his share in the lands passes to his heir or his next of kin?

With respect to real estates purchased by a partnership, the condition of the law is such, that conveyancers have avoided the mischiefs of uncertainty by vesting it in a trustee, in trust to be used and disposed of for the purposes of the partnership; and a declaration is inserted in the purchase-deed, that the property shall, as between the real and personal representatives of the partners, be personal estate, and this is chiefly in order to avoid the perplexing question to which class of representatives it belongs.* Upon this question

* 7 Jarman's Bythewood, 21.

the authorities are sadly conflicting both in law and equity, and the precaution commonly used by conveyancers is insufficient to meet all the points.

In the case of Thornton *v.* Dixon;* Bell *v.* Phyn;† Balmain *v.* Shore;‡ Lord Thurlow and Sir W. Grant held the real estates purchased by a partnership to remain as realty; and upon the death of one partner, that his heir became entitled to his share, and consequently, also, that it became subject to dower. But in the cases of Crawley *v.* Maule,§ Townsend *v.* Devaynes,‖ and Selking *v.* Davis,¶ Lord Eldon expressed his opinion that real estate, purchased for partnership purposes, was impressed with the quality of personal estate, so as to belong at the death of a partner to his personal representatives. This has been followed by Sir J. Leach in Phillips *v.* Phillips,** and also by Lord Cottenham, in Broom *v.* Broom,†† and in Morris *v.* Barrett;‡‡ in which cases it is determined that real property purchased for partnership purposes is, to all intents and purposes, to be considered as converted into *personal* estate. And it may now be considered as determined, that although the *legal* estate in *real* property, purchased by partners for the purposes of their trade, will go in the ordinary course of descent, yet the *equitable* interest in such property will be held to be part of the partnership stock, and distributable as personal estate.§§

* 3 Bro. 198. † 7 Ves. 453. ‡ 9 Ves. 500. § 1 Sw. 508, 521.
‖ Montague's Partnership Notes, 97. ¶ 2 Dow. 231. ** 1 M. & K. 649.
†† 3 M. and K. 444.
‡‡ 3 Y. and J. 384. See also Ripley *v.* Waterworth, 7 Ves. 425; 2 Hov. Suppl. 57. §§ Collyer, 76.

This is indeed an approximation to the customs of merchants, which has been effected by the far-sighted views of Lord Eldon overruling the decisions of his predecessors, which were so completely at variance with those customs, as to shake every extensive firm in the land. Accounts taken in the court of Chancery upon the principles laid down by Lord Eldon would, so far as the cases are at present developed, be satisfactory to the mercantile world. But though the courts have at length arrived at the same conclusions, their deductions are not made from the same fundamental principles. The merchant arrives at his conclusion from his own principles, that the firm is itself a kind of personage or corporation, to which, in its corporate character, all the partnership property belongs, and of which the partners themselves are only debtors and creditors; and upon a dissolution, the debts of the firm are to be paid, and for that purpose its realty as well as personalty is to be disposed of; and, consequently, if the death of one partner has occasioned the dissolution, whatever may be forthcoming as due to him from the partnership must pass to his personal representatives. An accountant in this case never thinks of the heirs or widow of a deceased partner; and there is no perplexity or confusion about the matter, whether the share consists of realty or personalty, or whether it belongs to the real or personal representatives of a deceased partner. It is regarded simply as a *debt*, and therefore passes to the person himself, or his personal representatives. Upon the merchant's principle, therefore, whether a real estate is conveyed to a trustee in trust for partnership purposes, or is conveyed to one, or more, or all the

partners as tenants in common, or as joint-tenants, an accountant would simply look to the fact,—whether or no it was brought in and adopted by the firm as part of the partnership property, or whether it was simply hired by the firm, and rent paid for it, and to whom; and if adopted, then Equity meeting the merchant's principle, should hold the tenants of the legal estate trustees for the firm, instead of holding, as it does, that they are trustees for the surviving partners, and the personal representatives of the deceased as tenants in common.

With respect to the clauses, it is only necessary to state precisely the terms, if the property is not brought in, so as to negative the presumption. If real property be brought in at the commencement, or be purchased during the course of the partnership, it is the subject of a distinct deed, in which the property should be conveyed to trustees in trust for the partnership; but a clause may nevertheless be introduced in the articles, simply stating that such property is taken and adopted, and is to be conveyed for the benefit of the firm, and is to be considered as partnership property. If any one of the partners, possessed of real property or a lease of a house, in which the business is to be carried on, does not intend to bring it in, which is the mostcommon case, the clause may be—

> That the said [partner] shall be allowed by the said partnership the yearly sum of 80*l.* by way of rent for the said messuage in street, so long as the said business shall be carried on therein; but that the said messuage shall continue the sole property of the said [partner], subject only to be used for the purposes of the said partnership business.

The reservation of any specific chattel real,* constitutes it part of the separate estate of the partner to whom it belongs; and it will be so dealt with in bankruptcy. This gives us an opportunity of calling attention to the very great difference between the practice of the courts of bankruptcy and the practice of accountants, upon the relative rights of the creditors of the joint and separate estate.

According to our law of bankruptcy, the separate estate must be distributed among the separate creditors, and the joint estate among the joint creditors; and if there be any surplus, it must be handed from the superabundant estate to the deficient estate.

To set these discrepancies in the clearest light, we will take a case, which in these speculative times is of daily occurrence. We will suppose A, a man worth 40,000*l.* clear, well known in London, and of extensive credit, to embark in partnership with an inventor B, to carry into effect some invention, which requires apparently more credit than actual capital; there being what might fairly be considered a most excellent prospect of success, and of turning the concern, as the phrase is, within a short space of time, viz., receiving from the anticipated profits of the concern, within the number of months in which the bills given by this partnership become due, sufficient money to meet them or take them up. Some accident intervenes, by which it becomes necessary for A, who undertakes to find money, to raise a sum to meet the numerous bills which

* Any thing coming under the term "goods and chattels," in possession of the firm at the time of bankruptcy, cannot be saved as separate estate.

the firm has ventured to put afloat, in expectation of their being taken up by the success of the project. A raises upon his own credit, from several persons, perhaps at a distance in the country, and altogether ignorant of his trading, what he himself considers only temporary loans, to the amount of 39,000*l.*, and brings this money into the firm, not as a loan, but as capital. We will further suppose that this is insufficient, and the firm, after a few more struggles, stops payment for 50,000*l.* owing to different individuals. A general meeting of all the creditors is called, in which there is a desire to settle the matter, and realize the effects as fast as possible; and for that purpose they put the matter into the hands of an accountant. If the accountant know any thing of the law of bankruptcy, he would see the difficulties; but if he simply followed out the mercantile principles, he would very quietly first take the accounts of the firm, and there find 50,000*l.* debt, and we will say 4000*l.* assets; and, consequently, a balance due to the firm, from A and B, to the amount of the losses, viz. 46,000*l.*; of which A was indebted 23,000*l.*, and B 23,000*l.*, or in some other proportions as the case might be: but as B is worth nothing at all, A would be answerable for the whole.* The accountant would then take A's accounts, where he finds A's estate worth 40,000*l.*, and that he is liable to the firm for 46,000*l.*, and to other people for 39,000*l.*, making

* This debt of A is properly his own debt to the amount of 23,000*l.*, and he is as a surety for B for the other 23,000*l.*, and *vice versâ*. As B had no private estate, the firm would go upon A for the whole; and if he had been solvent, he must have paid the whole; but if he had been insolvent, and B had had a separate estate, the firm would be simply in the position of a party holding a joint note, and could have gone upon both for 46,000*l.*, but could recover no more than the full amount.

the whole amount of his liabilities 85,000*l.*; upon which he would declare a dividend of 9*s.* 4½*d.* He would, therefore, carry over to the firm, as a creditor for 46,000*l.* the sum of 21,647*l.* 1*s.* 3*d.*; and to the private creditors 18,352*l.* 18*s.*9*d.*, which, distributed among the 39,000*l.* would give them a dividend of 9*s.* 4½*d.* He would then proceed to distribute the effects of the firm, which amount to the 21,647*l.* 1*s.* 3*d.* recovered from A, and the assets in hand, viz. 4000*l.*; and this being altogether 25,647*l.* 1*s.* 3*d.* distributed among 50,000*l.* would give a dividend of 10*s.* 3*d.* Such would be the result of the accountant's operation. But some of the separate creditors would probably be dissatisfied with this result, and strike a docket, and have the accounts taken in bankruptcy. The court of bankruptcy would immediately overthrow the accountant's labours, and take the accounts upon an entirely different plan. It would direct that the separate estate should be distributed among the separate creditors; and if there were any surplus, that it should be paid over to the joint estate. Therefore, as 40,000*l.* would be distributed among 39,000*l.*, they would be all paid in full, and 1000*l.* passed over to the joint estate, making the assets of the joint estate 5000*l.*, which being distributed among the 50,000*l.*, would be exactly 2*s.* in the pound. Thus the court of bankruptcy would give the separate creditor 20*s.* in the pound, and the joint 2*s.*; while, according to the mercantile principle, the separate creditors ought to have had but 9*s.* 4½*d.*, and the joint 10*s.* 3*d.** Such is the

* It might be here inquired, But why should they not all have been equal? That they should be equal can rarely happen; and, moreover, if the firm has any assets whatever, the joint creditors must have the advantage over the separate;

difference between the practice of the two. But if the firm had had no property at all, or the partners in a fit of despair had pledged all the assets for more than they were worth, the court of bankruptcy would have adopted the accountant's principle, and suffered the joint creditors to go in for their dividend upon the separate estate.

The general rule in bankruptcy that a joint creditor shall not receive dividends with separate creditors, nor separate creditors with joint creditors, is now the established practice in bankruptcy. But it has been so established with very considerable doubt and hesitation. As a general outline of the indecision of the courts upon the subject, Lord Hardwicke may perhaps be said to have established it. Lord King followed it as a matter of convenience. Lord Thurlow considered it with much anxiety, consulted most of the judges, expressed his decided opinion that the contrary course was the best, as being most legal, and held that joint creditors should be admitted to prove and take dividends under a separate commission. Lord Loughborough restored the rule. Lord Eldon took great pains with the subject, and in Dutton *v.* Morrison,* went through all the cases, and decided with much hesitation in favour of the rule, but closed his judgment by observing, "that it was

for the inquiry above raises a question of a very different nature, viz., Can a person in solvent circumstances do what he pleases with his personal property before he has committed an act of bankruptcy? The monied man in the case supposed, was no doubt at liberty to give his money to the firm just as much as he was at liberty to have raised, by sale or mortgage, all the money he did raise, instead of by simple contract. If he had raised by mortgage, he would have given his separate creditors the advantage, nor could his joint creditors have followed the assets; and this doctrine is fully recognised in bankruptcy. In the supposed case, he has given his joint creditors the advantage. The recognition of the firm as a kind of personage would solve every difficulty, and a firm would then be under precisely the same laws as an individual.

* 17 Ves. 211. See also Collyer, 526.

a very difficult subject, and that it often appeared to him that, both in bankruptcy and the administration of assets, the court has done more on principles of convenience than as standing upon legal reasoning." And in the case of Gray *v.* Chiswell,* his lordship, in similar terms of dissatisfaction, expressed himself, "that it is extremely difficult to say upon what the rule in bankruptcy is founded." But it is a most singular circumstance, that amidst all this doubt and hesitation, the courts never seem to have made the slightest inquiry into the practice of merchants and accountants.

The practice of the courts, however, has been deemed so unsatisfactory as a universal rule, that it has been relaxed to bring it a little more into accordance with what is required. This relaxation has taken the form of three exceptions to the rule, viz. 1. Where a joint creditor is the petitioning creditor under a separate fiat, he is allowed to prove. This is simply an exception in favour of one joint creditor, and it is reserved by the Bankrupt Act.† 2. Where there is no joint estate and no solvent partner, the joint creditors may resort to the separate estate; but where there is a joint estate to the amount of 5*l.*, that is a sufficient bar. The 3rd exception is, where there are no separate debts; which is admitted also when the separate debts are so small, that the joint creditors undertake to pay them all.

Closely connected with this is the case where joint effects are to be taken in execution for the separate debt of one of the partners. Upon this subject there is a disagreement between the practice of the courts of law and equity.

* 9 Ves. 125. † 6 Geo. IV., c. 16, s. 62.

The courts of law give a separate creditor an execution against the partnership effects. This practice of the courts of law is thus commented on by Lord Eldon, in the case of Waters *v.* Taylor.* "If the courts of law have followed the courts of equity in giving execution against partnership effects, I desire to have it understood, that they do not appear to me to adhere to the principle, when they suppose that the interest can be sold, before it has been ascertained what is the subject of sale or purchase. According to the old law before Lord Mansfield's time, the sheriff, under an execution against partnership effects (for a separate debt), took the undivided share of the debtor, without reference to the partnership account. But a court of equity would have set that right by taking the account and ascertaining what the sheriff ought to have sold. The courts of law, however, have now repeatedly laid down,† that they will sell the actual interest of the partner ; professing to execute the equities between the parties, but forgetting that a court of equity ascertained previously what was to be sold ;" and he inquires, " how could a court of law ascertain what was the interest to be sold, and what the equities, depending upon an account of all the concerns of the partners for years ?"

It seems that the way in which the sheriff executes the writ in practice, is by making a bill of sale of the actual interest.‡ In making a bill of sale of the actual interest, the courts of law have, in this instance, acted upon the correct idea, that the interest of the partner was that of a creditor for an undefined balance, and have attempted, by this method of a bill of sale, to put the separate creditors, into

* 2 V. & B. 299.

† Barhurst *v.* Clinkard, 1 Show, 173.—Eddie *v.* Davidson, Doug. 650.

‡ See Scott *v.* Scholey, East, 467.

possession of that balance. The courts of equity, however, will interfere in any actual sale; for they have decided, that if a separate creditor proceed against the partnership property, the partners may file a bill to be quieted in the partnership effects, and pray for an account of what is due from the firm to the partner who has given a security over his share, and for an injunction in the mean time.* Hence a judgment and execution against one partner for his separate debt does not put the other partners in a worse condition; for the judgment creditor can only have the balance due to him applied in satisfaction of the debt.†

In setting forth the unsatisfactory state of the law on the subject of joint and separate estate, we cannot perhaps do so more effectually than in the following observations of Lord Eldon, with which he prefaces his decision *In re* Wait.‡ "In my long course of practice, I have never been able to reconcile all the decisions that have taken place on partnership property with respect to joint and separate estate; nor have I ever been able very clearly to see my way in the application of the doctrine which has been held in some of the late cases on this subject. I conceive, originally the law was, that if there was a separate creditor of a partner, he might lay hold of any chattels belonging to the partnership, and take a moiety of them, or whatever other property that partner might be entitled to in the

* Taylor *v.* Fields, 15 Ves. 559, and 4 Ves. 396. See also Barker *v.* Goodair, 11 Ves. 85, and Campbell *v.* Mullet, 2 Sw. 551, and notes.

† Skipp *v.* Harwood 2 Sw. 586. — Eddis *v.* Davidson, Dougl. 650.— Bevan *v.* Lewis, 1 Sim. 37.

‡ 1 Jac. & W. 608.

effects of the partnership. But at law, some how or other, they now contrive to take an account, which ascertains what is the interest of the debtor in the effects taken in execution; and when you put the question—What is this interest? nothing can be more clear, than that it is that which would result to him when all the accounts of the partnership are taken. This equity, which has been transferred into the proceedings of a court of law, I apprehend, subsisted here long before: a separate creditor applying for satisfaction of his debt out of the partnership estate, by means of an equitable execution, must have taken it upon equitable terms. There has been a great deal of reasoning as to the rights of partners with reference to the execution of a separate creditor, but it always appeared to me, that the interest of the individual partner was all which a creditor of that individual could take, and that he must take it subject to all the partnership dealings. When we got into bankruptcy, Lord Hardwicke's great mind and great understanding were satisfied with this; and with respect to joint and separate estates, a rule was established which we have always acted upon, rather because we found it, than upon any inquiry into the principles on which it was established."

II. The next division of the subject relates to the different allowances to be made to one or other of the partners, for the more convenient progress of the business; and all these ought to be clearly defined and understood.

1. *Allowance of interest upon the capital.*
2. *Allowance of interest upon sums advanced as loans.*

} The distinction between sums advanced as capital, and sums advanced

as loans, has been already mentioned. This distinction should be further marked in a specific clause, providing for sums to be advanced as loans, and for the interest to be paid in such an event.

It is most usual and the proper method to provide, in all partnership articles, that interest should, in the first instance, be allowed upon the capital of the partners, before division of the profits is made; and this is a point to be particularly attended to when the capitals brought in are unequal.

Where one partner brings in all the capital, and another only labour or a discovery, interest is usually allowed to the capitalist, and a salary to the inventor or acting partner.

It often happens also, that the acting partner is desirous of bringing in capital as his profits accumulate; for his own firm is a more desirable investment for his profits, than any other concern, if it allows him equal interest. In this case, a clause is introduced, especially permitting the acting partner to bring in a capital proportioned to the amount of his profits.

Again, if any partner advances more than his due share of capital at first, or at any subsequent time, it should be clearly understood, that all such advances are to be considered as loans, and they should be so entered in the books, and the interest they are to bear should be also specified.

The above are the ordinary regulations in partnership articles respecting the allowance of interest.

In taking partnership accounts, there is a general feeling among accountants, as a matter of business, to allow the partners interest upon them before a division of the profits. But the courts of equity are not generally inclined

to allow interest as between partners; but where they are called upon to adjudicate the point, they will put each case upon its own merits, according to the provisions of the articles and the facts appearing. When the Court of Chancery, in taking partnership accounts, allows interest, it may be stated as a general proposition, that, in ordinary cases, 4*l.* per cent. is allowed; in cases of mis-management, 5*l.* per cent.; and in cases of gross fraud, 5*l.* per cent. with rests, *i. e.* compound interest, and that sometimes half-yearly, besides the costs of the suit.

The clauses are commonly to the effect—

That the said partners shall be deemed creditors of the partnership by the amount of their respective shares or proportions of the capital of the said firm; and shall be allowed interest thereon at the rate of 4*l.* (or 5*l.*) per cent. per annum.

That if either of the said partners shall, at any time or times, advance to or for the use of the said partnership, any sum or sums of money beyond the proportion which he ought to bring in, then the partner so advancing such sum or sums of money, shall be paid and allowed interest thereon, after the rate of 5*l.* per cent. per annum, before any division of the profits shall be made.

That if either of the said partners shall at any time draw any sum or sums of money out of the said partnership, for his own private use and benefit, beyond the sums hereinafter stipulated, to be drawn monthly by the said partners, the partner so overdrawing such sum or sums of money shall be charged interest thereon, after the rate of 5*l.* per cent. per annum, before any division of the profits shall be made.

That if the said [*acting partner*] shall, at any time hereafter, desire to bring in any part of the capital of the said partnership, he shall be at liberty so to do, to an amount not exceeding one-third part [*that is, one-third, or any*

other part equal to his proportion of the profits] of the said capital, at any of the annual rests hereinafter directed to be made, and in sums not less than 100*l.* at any one time, upon giving to the said [*capitalist partner*] three months, notice of his intention so to do, in case it shall be necessary for the said [*capitalist*] to withdraw any part of his capital invested in the said business.

3. *Allowance to partners to draw certain sums monthly.* All drafts upon the partnership for private use should be made by checque upon the bankers of the firm. Such drafts may be made as they are wanted, and as the finances of the firm permit; but, if feasible, the best method is by monthly instalments, and sometimes a junior partner is allowed a weekly allowance; if so, it should be expressly mentioned, whether this is a salary, or to be considered part of his profits. All these drafts upon the partnership funds, are to be carried in the books to the private accounts of the partners respectively, and the differences adjusted at the annual rest, as is explained in Appendix III.

That the said A shall be at liberty to draw out of the funds of the said partnership, for his private expenses, the sum of *l.* by monthly instalments, during any current year of the said partnership; and the said B shall be at liberty to draw out the monthly sum of *l.* in like manner; and the sums which shall be so drawn out by the said partners, shall be in part or in full satisfaction, as the case may be, of their respective shares of the profits of the said partnership, and shall be brought into account at the annual rest and settlement of the accounts of the said partnership.

4. Allowance of a salary to acting partner. This clause is common, where the partners stand upon equal advantages with respect to capital, and one takes upon himself all the care and trouble of the business; and also where one partner brings in the capital, for which he receives interest, and the other takes upon himself the management of the concern. But when, upon a dissolution, a partner undertakes to wind up the affairs of the concern, he can claim no compensation for his trouble* unless provided for; nor will a salary be allowed a surviving partner carrying on the business, where the nominee of the deceased partner is at a future time to succeed, unless it is specifically agreed on.

That the said B shall be allowed the sum of 200*l.* yearly, by way of salary, before the division of the profits of the said partnership, in compensation for his trouble in managing and superintending the said business.

5. Allowance of rent or residence.] When one partner resides upon the premises, it is not unusual that he should be allowed to live rent free. Rates and taxes also, as well as coals and candles, are sometimes allowed to a resident partner, according to the nature of the business. But all these matters should be accurately defined.

That the said B shall be at liberty, if he think proper, to use or occupy such part of the said messuage, as is not used in or wanted for the purposes of the said partnership business, for the residence of himself and family, without paying any rent or taxes for the same;—*or*—[at the yearly rent of *l.*, to be paid or allowed by him to the said partnership.]

* Whittle *v.* M'Farlane, Knapp Priv. 312.

6. *Allowances for treating customers.* If this item is to be allowed to a managing partner, it should be expressly specified. In passing partnership accounts in Chancery, it will be allowed as a just allowance, if specified in the articles. But *semble* such an allowance will not be made unless expressly provided, or referred to, by the articles. *Secus* if it appears in a settled account.†

That the said B shall be allowed all such sums of money as he may expend in treating any of the customers of the said partnership; provided the same shall be claimed and brought to account and entered in the books of the said partnership within seven days next after the expenditure thereof, but not otherwise.

7. *Allowances of articles of trade for private consumption.* This is an allowance not unfrequently stipulated in articles; and, if intended, should be always inserted, as it would never be allowed in an unsettled account.

That the said B shall be provided, at the expense of the said partnership with all such [*any particular articles of the trade*] as he and his family may, during the continuance of the said partnership, use and consume in the said dwelling-house.

8. *Allowances for maintenance of servants.* It would depend entirely upon circumstances whether or no this item would be allowed without a stipulation. For apprentices probably an

* Hibbert *v.* Hibbert; Rolls Tr. Term, 1807. Coll. 185.

† Thornton *v.* Proctor; 1 Anst. 94.

allowance would be made. At all events, a residing partner should not, without a proper understanding, undertake the maintenance of a servant of the firm in his own house.

That the apprentices and servants of the said partnership shall be boarded and lodged by the said B, in his said dwelling-house upon the said premises, and that the said B shall be allowed the yearly sum of *l.* for every apprentice employed for the purposes of the said partnership, that shall, by the consent of the said A, be so boarded and lodged by the said B.

9. *Apprentices.* } That one partner should not,
10. *Premiums.* } without the consent of all, take or dismiss any clerk or apprentice, is a usual clause, and should rather be inserted among the personal duties of partners than among the allowance clauses; but wherever it is, it is commonly combined with the clauses that apprentice-premiums shall be taken as partnership profits; and in all instances, apprentice-premiums are partnership profits; and any apprentice taken without the consent of all the partners, can be excluded by any one of them from the premises.

That no apprentice, clerk, or servant, shall be taken or engaged, or be employed in or about the said business, by either of the said partners, without the consent of the others of them.

That all premiums and apprentice fees, to be paid with any apprentice, or other person to be received into the said business, shall be considered as part of the profits of the said business, and be divided accordingly.

11. *Rent, taxes, salaries, and all outgoings, shall be paid out of the profits before deduction.* Rent, taxes, rates, clerks' salaries, insurances, and indeed all allowances, will, in the ordinary course of the accounts, find their way into the Profit and loss account, and be paid before division of the profits. A stipulation however, that such, should be the case, is usually introduced. Under one of the items, that for the payment of salaries, there has arisen one of the most important points relative to partnerships, viz. the remuneration allowed to certain clerks, or assistants engaged in disposing of the manufactured articles of the firm, as well as annuities paid to retiring partners or their widows.

The fundamental principle of partnership as to third persons is, that every person who takes an interest in the profits becomes liable as a partner: and this is a rule which results no less from the mercantile view of the case, "that those who receive the surplus from the Profit and loss sheet, must replace its deficiencies," than from the view taken of it by the law—"that it is but justice that those who receive the benefit shall not shake off the responsibility."

It has, however, been frequently considered advantageous, in certain lines of business, to stimulate the activity of clerks and persons intrusted with the sale or disposal of the goods, by giving them a share in the profits; but, as the law holds, a person who receives a share of the profits *as profits*, a partner in the concern, it is a matter most carefully to be observed by all mercantile men, that the remuneration of a clerk by a share in the profits, renders that clerk a partner as to third persons.

There is, however, an exception to this rule which is

thus concisely stated by Mr. B. Ker, in his Report, "An exception to this rule has been allowed, where the interest in the profits is in the nature of a compensation for services, as in case of captains of trading vessels, factors, agents, clerks, and others; but this exception has been thought (in consequence of some observations of Lord Eldon)* to be narrowed to the case of a stipulation for a sum *equal in amount* to a share of the profits, and not to extend to a share of the profits themselves. This distinction was not considered by Lord Eldon to be satisfactory; and an attempt was lately made to support the exception, on the ground of the character and relation of the partners, and without resorting to the terms of the agreement. At present, however, it does not seem to rest on a satisfactory foundation. Another exception has been allowed in case of annuities out of the profits of a partnership to retiring partners, widows, and others; but doubts have been thrown on the security of these provisions, by a clause, as it seems, unnecessarily introduced into a late act of Parliament."†

The proposals lately made for the introduction of *Commandite* partnerships, or partnerships with restricted liability, into England, have called a more than ordinary degree of attention to this part of the law of partnership, and some most valuable opinions upon the subject are to be found in the Appendix to Mr. Ker's Report. Under the distinction above (which has been considered to be sanctioned by the observations of Lord Eldon), that a person may be remunerated by a sum equal to a certain pro-

* See Exp. Hamper, 17 Ves. 404.

† See Lord Eldon's observations in Candler *v.* Candler, Jac. 225, upon 41 Geo. III., c. 76, s. 10.

portion of the profits, the *Commandite* law might be introduced to any extent (as it exists in France; where, if the concern turn out an unprofitable speculation, the partner *en commanditaire* is compellable to refund all he has received under the name of profits). And partnerships have been unadvisedly formed, and are in existence, under the notion that this is the unquestioned law of the land.

The distinction taken is such a manifest evasion, that there is no defending it upon any principle. The observations of Lord Eldon, so far from sanctioning such a position, tended only to cut down a previous infringement of the principle of liability to that position. So far from admitting the law to be capable of such an extension, he narrowed it from its previous extension to that point—instead of enlarging, he contracted. The evasion is so palpably indefensible, that the only question to be considered is, whether the anomaly is to be got rid of by setting aside at once the whole line of cases, by declaring that an interest commensurate with the profits, is an interest in the profits, which may be done without the interference of the legislature by overruling the cases; or whether the principle shall be admitted, that, under certain modifications, a person may have an interest in the profits without incurring liability as a partner, where he does not act as a partner, nor bring in any capital.*

Whether it is advisable to admit partnerships with limited responsibilities, is a question upon which we shall have shortly to make some observations. But, with respect to the admission of clerks to a share of the profits, a dis-

* See the evidence of the Mr. Tinney and the other gentlemen examined before the committee.

tinction must be taken between the *gross* and the *net* profits; for the principle of a *per centage*, or a proportion of the gross profits of a particular adventure, or upon the sale of any goods, is a common mode of remuneration, which is constantly resorted to, and has only been called in question in the case of Dry and Boswell,* where the court decided, that a proportion of the gross earnings of a lighter to a lighterman, as wages, did not constitute a partnership. This principle of a per centage or commission, is universally resorted to. It is not the slightest infringement upon the principles of liability; nor is it subject to any abuse. Per centages, commissions, and the like, find their way into the profit and loss sheet in the common course of business, among the ordinary expenses of the firm, without the necessity of making up the books and ascertaining its profits; in short, they are totally different from the balance which constitutes the profits.

With respect to clerks, agents, and the like, a participation of the net profit is a most undesirable method of remuneration; and every object sought, can be far better attained through commission or a per centage upon the *gross* proceeds of each sale or adventure, upon which the labour of the agent can be ascertained;† and, in this manner, a clerk or agent can always be remunerated. But with respect to the *net* profits, so long as partnerships with restricted liability are not permitted in England, the invaluable principle, that he that takes the profits shall bear the losses, ought not to be broken in upon.

There seems to be no necessity for sanctioning the in-

* 1 Camp. 330. † Lord Ashburton's evidence.

fringement of the general principle; and the great majority of the opinions, both commercial and legal, are opposed to it.*

With respect to the way in which a remedy should be applied, and the present evasion set aside, it has been thought that a legislative enactment was necessary; but many of the opinions are decidedly against a measure of the kind, which, by the very act of defining exactly what a person might not do, would probably leave room for the introduction of a variety of practices within the letter, but evasions of the spirit, of the act†; which, without any precise enactment, would only be regarded in the courts as colourable evasions or frauds. The machinery of the laws has within itself the proper remedy for the evil. The authority of these cases is already shaken, they are universally disapproved by the profession; and must shortly, in the ordinary course of adjudication, be overruled; and this, with the common advantage of giving sufficient warning to all who have ventured to embark in any speculations upon this foundation.

With respect to annuities to retiring partners and widows, there are a variety of ways of dealing with these cases, without resorting to a method so questionable, as giving them an annuity in proportion to the profits.

If an annuity be given to a retiring partner, simply in consideration of his retiring, this is a purchase of his share, and it may be purchased at a *fixed* annuity as well as at a money price; but if he chooses to be a sharer of the profits, instead of a vendor of his share at a money price or fixed annuity, he choses to be a *dormant* partner

* Report 19. † See Mr. Wilde's opinion. Report 57.

instead of a *retiring* partner, and ought to be liable as a partner.

If, upon retirement, he take a proportional annuity in consideration of leaving his capital in, he ought *a fortiori* to be considered as a partner, as he gives the firm an apparent stability, which it has not.

With respect to widows, the same observations will apply. If they receive an annuity in consideration of an interest, it ought to be a fixed annuity, independent of the partnership profits; which should likewise be the case, where it is given in the form of a pension without consideration. The cases, with respect to widows, are as much shaken as those relating to clerks and retiring partners, and, without the interference of the legislature, will probably be overruled before any great length of time has elapsed.*

There are several cases of partnership in particular adventures, where one provides the goods and another the labour; as, where goods belonging to one are shipped and disposed of at the risk and trouble of another, as the captain or owner of the vessel in which they are transported, or of a broker, or agent. These cases have established a principle, that the parties thus adventuring may be partners in the profits without being partners in the goods. But as these cases seldom produce accounts of any consequence, we may pass them by without further notice.

III. The next portion of a partnership deed relates to the several DUTIES of the partners. Several of these

* But see the 41 Geo. III., c. 76, s. 10, and the observations of Lord Eldon in Candler *v.* Candler, Jac. 231.

duties arise by the contract alone, while others are the common incidents of partnership. It is seldom absolutely necessary to introduce the majority of these clauses, for they constitute a private code of regulations, and very few of them can be dealt with or enforced in a court of law or equity. Nevertheless, where there has been a wilful, studied, and habitual breach of these covenants, a court of equity will, in some instances, grant an injunction to restrain it, or decree a dissolution of the partnership; but each case will depend upon its own merits. It hardly comes within the scope of a treatise on accounts to make any observations upon this part of the articles; but it may be useful to enumerate the points and clauses.

1. *That the partners shall be true and just to each other.*
2. *And diligently employ themselves;* Or, *which partner shall take the management, and which be dormant.*
3. *And communicate all partnership transactions to each other.*

All these may be inserted in one clause, or with any variations the circumstances may require.

1. That the said partners shall be true and just to each other in all their dealings.
2. And shall at all times during the continuance of the said partnership, diligently and faithfully employ themselves respectively in the conduct and management of the said business, and the concerns of the said partnership.

Or,

That the said B shall, at all times, during the continuance of the said partnership, diligently and faithfully employ himself in the conduct and management of the business, unless prevented by sickness, or other reasonable causes of excuse, from the hour of nine in the morning to five

in the afternoon in each day. But that the said A shall not be obliged to attend to the said business, unless he shall think proper so to do.

3. That each of the said partners shall, during the said partnership, upon every reasonable request, communicate to the other all letters, accounts, writings, or other things, which shall come to his hands or knowledge, in respect of the said partnership.

4. *Shall not engage in any other trade.*] A covenant not to engage in any other trade, does not prevent a partner, in contemplation of a dissolution, from canvassing for future business.* But where there is a covenant not to engage in a *particular* business, *Semble expressio unius est exclusio alterius;* and that it is open to him to engage in any other.† It seems, that when a partner engages in a separate business in violation of his articles, his partners will be entitled to a share of the profits.‡ *Secus* where permission has been given.§

4. That neither the said A and B shall, during the continuance of the partnership, directly or indirectly, engage in any trade, manufacture, or business, except upon account and for the benefit of the said partnership.

5. *That they shall not employ the partnership effects except for partnership purposes.*

6. *Nor engage its credit.*

7. *Nor, without consent, buy goods beyond a certain amount.*

8. *Nor, against the consent of the partners, transact business.*

These clauses all consist of certain restrictions upon the general rights of partnership as between the partners. For, with regard to

* Coates *v.* Coates, 6 Mad. 287. † Glassington *v.* Thwaites, 1 S. & S. 132.
‡ Somerville *v.* Mackay, 16 Ves. 382. § Bosanquet *v.* Wray, 6 Taunt. 597.

9. *Nor give credit.*
10. *Nor lend its money.*
11. *Nor release or compound debts.*
12. *Nor sign bankrupt's certificates.*

} third persons, any partner is competent to do all these things; and the firm will be answerable for all such acts done by any of the partners. The partners, therefore, by these clauses, contract to give up, as between themselves, such powers over the partnership effects, as may be exercised to the prejudice of the partnership. There is, however, no remedy at law to enforce these clauses, unless a clause be added of debiting the transgressing partner in account with the fruits of his own misconduct, according to clause No. 9, in page 104.

5. That neither of the said partners shall, without the consent in writing of the others of them, employ any of the monies, goods, or effects, of the said partnership.
6. Nor engage the credit thereof, except upon account, or for the benefit, of the said partnership.
7. That neither of the said partners shall buy, or engage in any contract for any goods, or other article whatsoever, exceeding the value of *l.* without the consent in writing of the others of them.
8. That neither of the said partners shall transact any
9. business, Nor enter into any contract or agreement with,
10. Nor give credit to any person or persons; nor lend or advance any sum or sums of money out of the said partnership funds to any person or persons, after he shall be requested by the others of the said partners not to do so.
11. And that neither of the said partners, without the consent of the others of them, shall compound, release, or discharge, any debt or debts which shall be due or owing to the said partnership, without receiving the full
12 amount thereof; Nor sign any bankrupt's certificate,

letter of license, or other instrument, whereby any debt or security shall be in any wise discharged, vacated, or diminished.

13. *That they shall not draw bills, &c., except in the usual course of business.*
14. *Nor speculate in the funds.*
15. *Nor become bail.*
16. *Nor assign or withdraw capital.*
17. *Nor do any act by which the partnership property may be taken in execution.*

These clauses entirely relate to certain private acts, from which each partner agrees to refrain during the continuance of the partnership.

Such acts do not immediately concern the partnership, though they may indirectly affect it, by involving one of the partners in difficulties. There is no direct remedy at law for any transgression of these clauses, except by a dissolution of the partnership, under what is called the expulsion clause. And, indeed, when a partner, by his necessities or carelessness, has recourse to such measures, it is a matter of prudence for the solvent partners to dissolve.

These clauses are directed as a defence against the decisions before adverted to, in which it has been determined at law, that the partnership effects may be taken in execution for the private debt of a partner.

13. That neither of the said partners, during the continuance of the said partnership, shall, without the consent of the others of them, draw or accept any bill of exchange or promissory note, or contract any debt on account of the said partnership, except in the usual and regular course of the business of the said partnership, nor draw, indorse, or accept, any accommodation bill or note, or underwrite any policy of insurance.

14. Nor make or enter into any time-bargain for the sale or

purchase of stock in any government security, nor expose himself to any other risk or hazard in any gaming transaction.

15. Nor become bail or surety for any person or persons.
16. And that neither of the said partners shall assign his share or interest in the said partnership, or withdraw his share of the capital therein.
17. Or knowingly or willingly do, commit, or permit, any act, matter, or thing whatsoever, by which, or by means of which, the said partnership monies or effects shall be seised, attached, extended, or taken in execution.

IV. Then follow what may be called the accounting clauses of the articles.

1. *That proper books of accounts shall be kept.*
2. *True entries to be made by each partner.*
3. *The books, together with all partnership documents, to be kept at the place of business, and to be open to the inspection of the partners.*

All these are incidents of partnership generally. It is not, however, sufficient to insert the clauses; the great object is properly to open the books in all things, in conformity with the facts as set forth in the articles—

1. That the said partners shall keep, or cause to be kept, proper accounts in writing.
2. That each of the said partners shall, in the said accounts, make true, plain, and perfect entries of all the monies, goods, effects, credits, and other things received, purchased, sold, or contracted for, and of all other business transacted on account of the said partnership, together with all such circumstances of names, times, and places, as are usually entered in the books of persons engaged in the business of a ———.

3. That the said books and accounts, together with all deeds, securities for monies, documents, and papers, belonging to the said partnership, shall be kept at the counting-house of the said partnership, where the said business shall be carried on, and not elsewhere, and shall at all reasonable times be open to the inspection of the said partners.

4. *The books to be kept by the acting partner.*
5. *That all drafts and acceptances be signed by him.*
Proviso in case of sickness.

These provisions are sometimes introduced, but are not necessary.

4. That the said books of account shall be posted and duly kept by the said B.

5. And that all bills, drafts, promissory notes, and all acceptances of any bills, drafts, or notes, and all indorsements thereon, and all receipts, payments, or letters relative to the said business, shall be signed only by the said B, or, in case of sickness or absence, by such other person or persons as shall be appointed or substituted in his place by the consent of the said partners [or the majority of them].

6. *That all securities shall be made and taken in the name of the firm.*

This may sometimes be a matter of importance.

6. That all mortgages, leases, bonds, specialties, and securities whatsoever, shall be made and taken in the name of both partners, or in the name of such trustee or trustees, upon trust for the benefit of the said firm, as the said partners [or the majority of them] shall appoint.

7. *What bank shall be used.*] This is not an essential clause.

7. That Messrs. & Co., or such other bankers as the said partners shall mutually agree upon, shall be the bankers of the said partnership, in whose hands shall be placed all such monies and securities, deeds, papers, and writings, as the said partners shall have occasion to deposit in a banker's hands, [and on whom the said partners respectively shall be at liberty to draw cheques for the purposes of the said partnership.]

8. *That the cash-book be made up weekly.*
9. *That all cash balances be paid weekly into the bank.*

These are clauses sometimes introduced; and in some lines of business, this practice is important, and in all is very judicious, and very commonly resorted to.

8. That the cash account of the said business shall, during the continuance of the said partnership, be settled and balanced once in every week.
9. And the balance of the cash in hand on every such weekly settlement, shall be paid into the said bank, to the account of the said partnership.

10. *That all monies received by each partner be duly paid in.*

This, in practice, ought always to be attended to, that every farthing received by any partner should be passed through the bank, and never applied off-hand to any purpose, particularly to a private purpose. The advantage to be gained by this method of paying in every sum, and paying all sums and disbursements by cheque, has been already dwelt upon, and it gives the proceedings a degree of regularity, that no other method can supply.

10. That all such monies as shall be received on account of

the said partnership, by either of the said partners, shall be forthwith paid into the said bank, to the account of the said partnership.

11. *That a general account and rest be made yearly* [*or half-yearly.*]
12. *To be entered in two rest-books.*
13. *To be signed, and to be conclusive.*
14. *Division of the profits.*

The necessity of stock-taking, and a general account and rest, and the mode in which it is done, has been discussed in a preceding chapter.* These clauses commonly direct, that the state of affairs shall be entered in two books, one to be kept by each partner; that the copies of the balance-sheet shall be signed by each partner, and be conclusive, errors excepted; and that, after the proper allowances are made, the profits shall be shared in the stipulated proportions. A rest-book is provided for each partner, and is the same thing as a private ledger. Some firms, however, choose to keep both, because in the private ledger they introduce different branches of the profit and loss account, such as detached adventures, and the like.

11. That, as soon as conveniently may be after the day† of in each year, during the continuance of the said partnership, a general account and rest in writing shall be taken and made of all the stock, credits and effects, debts and liabilities, of the said partnership; and a just valuation or appraisement shall be made of all the particulars included in such account.
12. And the said general account, or rest and valuation, shall,

* See Chap. II.

† The time of the year when the least business is stirring.

13. from time to time, be written in two books, and be signed and subscribed in each of such books, by each of the said partners, within one month after the taking thereof
14. respectively. And after such signing and subscribing, each of the said partners shall take one of the said books into his custody, and be bound and concluded by every such account respectively, unless some manifest error shall be found therein, and signified by either of the said partners to the other of them, within one year from the date of such account; in which case, but not otherwise, such error shall be rectified. And upon making up of every such yearly account, all interest due to either of the said partners, in respect of any sums advanced by them as loans to the said partnership, and in respect of their capital, and all just allowances for rent, salaries, and other the matters hereinbefore or hereinafter directed to be allowed, shall, in the first place, be deducted; and after all such necessary deductions and allowances, the clear profits of the said business shall be divided between them, the said A and B, according to their respective shares and proportions hereinbefore directed and agreed.

V. The clauses relating to a dissolution and final winding up of the affairs are, perhaps, the most important of the whole.

But, before they are reviewed, it will not be amiss to make some general observations upon the dissolution of a partnership.

Where a partnership is entered into without any limitation of time during which it is to be continued, it is called a *Partnership at will;* and a *Partnership for a term of years* is one where, by the articles, it is to be continued for a fixed term of years.

A *partnership at will* may be dissolved at any time,* at the will of any one of the partners, upon notice given to the others. It may also be dissolved by the *outlawry*, or *attainder*† for treason or felony, by the *bankruptcy*‡ or death of any of the partners, or by the *marriage* of a feme sole

A *partnership for a fixed term of years* may be dissolved by the *outlawry*, *attainder*, *bankruptcy*, or *death*§ of any of the partners; and also by *mutual consent*, by *effluxion* of the time limited, or by *decree of a court of equity*. But it seems the marriage of a feme sole does not dissolve a partnership for years.‖

In *partnerships at will*, or where a clause has been inserted in the articles for a dissolution upon notice, any one of the partners who has been aggrieved by his copartner has a remedy in his own hands, so far as that, at any time, he can dissolve the partnership; but, in *partnerships for a fixed term of years*, if a partner is aggrieved, and none of the incidents above occur to dissolve the partnership, and he cannot gain the consent of his partners for dissolution, his only resource is an application to the Court of Chancery to dissolve the partnership.

It is not, however, upon every slight grievance that the court will take upon itself to dissolve a partnership.

* Peacock *v.* Peacock, 15 Ves. 50. Ib. 226. 1 Sw. 481. Beak *v.* Beak, 3 Sw. 627.

† Upon attainder, or outlawry, the law of England, holding partnership to be joint tenancy, vests the whole partnership property in the crown; this, however, is never enforced.

‡ Crawshay *v.* Collins, 15 Ves. 218.

§ Gillespie *v.* Hamilton, 3 Mad. 251.

‖ It is customary, in the partnership deed of a feme sole, to provide for a dissolution, in case the husband interferes.

All the other incidents which cause dissolution are simple matters of fact, easily ascertained: but the grounds upon which the court will dissolve a partnership are more undefined, and it is difficult to draw the line of distinction. Among the grounds which have been considered sufficient, may be enumerated—

1. The impracticability of the undertaking.*
2. *Semble.* Where a capitalist, having advanced the means agreed on, finds the event problematical, and feasible only upon a greater outlay.†
3. Where the conduct of the parties render it impossible to carry on the partnership upon the original terms.‡
4. Conduct amounting to the exclusion of one partner, is a sufficient ground.§
5. Fraud, want of good faith, gross neglect, carelessness, and waste, are sufficient.‖
6. Exclusion from the partnership books, and omission to enter receipts, though serious grounds of complaint, are insufficient.¶
7. Overbearing conduct, badness of temper, is insufficient.**
8. Violent and lasting dissension, as, where the partners refuse to meet, is sufficient.††
9. Temporary illness is insufficient.‡‡
10. Lunacy of a partner, who, by the contract, ought to be an acting partner, especially if pronounced incurable, is suf-

* Baring *v.* Dix, 2 Cox, 212.
† Barr *v.* Spiers, 2 Bell Com. 642. Collyer, Partnership, 159.
‡ Waters *v.* Taylor, 2 Ves. and Beames, 299. Baring *v.* Dix, 1 Cox, 213.
§ Goodman *v.* Whitcomb, 1 J. & W. 592.
‖ Chapman *v.* Beach, 1 J. & W. 594. Master *v.* Kirton, 3 Ves. 74.
¶ Goodman *v* Whitcomb, 1 J. & W. 592.
** Ib.
†† De Beranger *v.* Hammel, 7 Jarm. Bythewood, 26.
‡‡ Huddlestone's Cases, 2 Ves. sen. 33. Wrexham *v.* Huddlestone, 1 Sw. 504.

ficient;* but the other partners cannot dissolve without the interference of the court.†

1. *Power of dissolution.*]—To avoid having recourse to the Court of Chancery to dissolve the partnership, it is usual to make a provision to that effect, as follows:

1. That if either of the said partners shall be desirous of discontinuing the said partnership at any time before the expiration of the said term of —— years, and of such desire shall give or leave six calendar months previous notice in writing, to or for the other of the said partners, at the counting-house of the said partnership, then, and in such case, the said partnership shall cease and determine upon the expiration of the said six calendar months, or at such future day or time as shall be named in the said notice; and the party so giving such notice of dissolution shall be at full liberty, and is hereby authorised, to advertise the same in the "London Gazette," with the consent of the other.

2. *General account.*]—Upon the dissolution of the partnership, either by the effluxion of time, death, notice of dissolution, or other causes, it is necessary not only that a general account should be taken, but that the partnership affairs should be wound up and settled, and the effects disposed of.

The clause for taking the general account may be simply—

* Sayer *v.* Bennet, 1 Cox, 107. Mont. Partnership, appx. Wats. Partnership, appx. Adams *v.* Lidiart. Wats. Partnership, appx. Jones *v.* Noy, 2 M. & K. 125. Featherstonehaugh *v.* Fenwick, 17 Ves. 298.

† Waters *v.* Taylor, 2 V. and B. 303.

2. That, within the space of six calendar months after the expiration of the said term of fourteen years, or sooner determination of the said partnership, a full and particular account in writing shall be made and taken of all the stock, credits, and effects, debts and liabilities, of the said partnership.

3. *Disposal of the partnership effects.*]—There are two methods by which the partnership effects are disposed of, and its affairs wound up and settled. 1. The first is, to give the surviving or continuing partner an opportunity to take all the effects, and settle the debts upon a valuation. 2. And the second is, to sell the effects, pay the debts, and share the surplus. The latter method is adopted by the Court of Chancery, in all instances where the parties come before it without any stipulation; but it is usual, and of the most vital importance, especially in all large established houses, to provide against the possibility of a sale of the partnership effects, and breaking up of the firm, upon the death or other dissolution of the partnership, according to the law of England.

It is one of the greatest hardships of the law, that a refractory or ill-advised partner, with, perhaps, a very insignificant share in the concern, and even the executors of a deceased partner, can insist upon a sale and division of all the partnership effects, and thus oppress the continuing partners, leaving them no alternative between the ruinous consequences of such a stoppage of business, and buying him out at a price extravagant beyond all bounds. It must be observed, that it has been decided that the continuing partners cannot

insist upon taking the share of an outgoing partner at a valuation, or that he shall remove his share from the premises, and thus leave the good-will.* For this hardship, we think a remedy may be very easily provided; but, while the law stands as it does, it must be still the practice to introduce clauses which shall, as far as possible, meet the hardship of the case. Upon clauses introduced for that purpose, the Court of Chancery will act, by enforcing a specific performance of them, probably in every instance: though it is still an undecided point, whether such a provision would be binding in the event of bankruptcy.†

When the partnership property is taken by one of the partners, upon a fair dissolution, and that one afterwards becomes bankrupt, the joint creditors have no right as against what was joint property remaining in specie:‡ for the *joint* becomes *separate* estate, if possession was given according to the nature of the contract.§

It may also be observed, that the dissolution of a partnership does not, in any manner, affect the legal estate of the partnership property, whether it be dissolved by consent or effluxion of time;‖ but, as the partners were possessed of the legal estate in the partnership assets, the legal estate, of course, continues precisely as it did, and the parties still possess the

* Featherstonehaugh *v.* Fenwick, 17 Ves. 298. Cook *v.* Collingridge, Jac. 607. Crawshay, *v.* Collins 2 Russ. 345.

† It is considered it would. See 1 Sw. 481 and 7 Jarm. Byth. 31.

‡ *Exp.* Ruffin, 6 Ves. 119. *Exp.* Williams, 11 Ves. 3. *Exp.* Fell, 10 Ves. 347. 1 Rose, 416.

§ *Exp.* Harris, 1 Mad. 589.

‖ West *v.* Skip, 1 Ves. sen. 242. *Exp.* Smith, 5 Ves. 297.

legal estate, upon trust,* to be applied to such purposes as the exigencies of the firm, upon winding up the affairs, shall require; viz., for sale, payment of debts, and division.

After a dissolution, the partnership still continues, as to some purposes, so far as it is necessary to wind up the affairs; but the partners cannot enter into any more engagements, and a bill lies to restrain a partner from executing securities in the name of the firm,† and the court will grant an injunction for that purpose.

Where the option clauses are introduced, they are to the following effect:

3. *That a valuation be made, including the goodwill.*

4. *Option given to continuing partner to take the effects at the valuation.*

5. *Upon his giving a bond for payment by instalments.*

6. *With interest thereon.*

7. *And a bond of indemnity to discontinuing partner.*

8. *On taking an assignment of the effects.*

The good-will of a *profession* is not considered as matter of valuation, as it depends upon the personal qualities of the practitioner. The good-will of a trade is generally valued, or estimated, upon admission of a new partner, but, it seems, cannot be claimed by an executor.‡ Different methods are resorted to to ascertain it. The clauses may be to the effect—

3. That, if a dissolution of the said partnership shall happen,

* Pearce *v.* Chamberlain, 2 Ves. sen. 33.

† Hammond *v.* Douglas, 5 Ves. *sed quære*; see note in that case.

‡ Master *v.* Kirton, 3 Ves. 75.

either by death, retirement, or expulsion [bankruptcy or insolvency],* of either of the said partners, and the remaining or continuing partner shall be desirous of purchasing the share of the partner who shall discontinue the said partnership, of and in the stock, credits, and effects, and all other the property, then the value thereof, and of the good-will thereof, shall be ascertained by two indifferent persons: one to be chosen by the continuing partner, and the other by the discontinuing partner, or by his executors, administrators [or assigns]; and the continuing partner shall, thereupon, become the purchaser of, and be fully entitled to, the said share, stock, good-will, credits, effects, books, and all other the property of the said partnership, at such valuation; and shall enter into a bond, in a sufficient penalty, for paying to the said discontinuing partner, his executors, administrators [or assigns], the amount of such valuation, by three equal instalments, at the respective periods of six, twelve, and eighteen calendar months next after such dissolution of the said partnership, with interest, at the rate of 5 *per centum per annum*, from the term of such dissolution, and give a bond for indemnifying the estates and effects of the said discontinuing partner against the debts and demands due or owing by or from the said partnership, on having a proper assignment or assurance executed, for vesting in the said continuing partner the share of the said discontinuing partner, and enabling such continuing partner to collect and get in all the credits and effects due, and owing, and belonging to the said partnership.

To these clauses are, in some instances, added covenants—

* See the observations of Sir W. Grant, in 1 Sw. 481. It is doubtful whether this could be carried into effect against the assignees of a bankrupt. No harm can arise by the insertion of the words, for, if the point should arise, the continuing partner is under no obligation to try the point, unless he pleases.

9. *For further assurance.**
10. *That the retiring partner will not release any of the debts assigned.*

But it is usual to execute an assignment, or power of attorney, to enable the continuing party to collect the debts, and in this the assignor covenants not to interfere in the receipt and recovery of the assets.

11. *Sale of all the effects.*
12. *Debts to be paid.*
13. *And all advances, by either partner, with interest.*
14. *Division of the residue.*

} In the event of the option not being accepted, the usual mode of closing a partnership, by a sale of all the partnership effects, is provided for by clauses to the following effect:

11. But if the said partnership shall determine by the expiration of the said term,† or in case the surviving or continuing partner shall, upon the dissolution of the said partnership, by any of the events aforesaid, decline to purchase the share of the deceased or discontinuing partner in manner aforesaid, then all the stock, credits, and effects of the said partnership shall be got in and converted into
12. money; and out of the said money arising therefrom, all the debts due from the said partnership shall be dis-
13. charged, together with all such sum or sums of money as shall have been advanced by either of the said partners beyond his share of the said capital, with interest
14. thereon, at 5*l.* per cent. per annum; and the surplus and residue thereof shall be divided between the said partners, or the representatives of the deceased partner, in the proportions hereinbefore mentioned.

* See clauses 15 and 16.

† It is not uncommon to give one of the partners an option to take the business upon the expiration of the term of the partnership.

15. *Apportionment of the remaining effects and credits.*
16. *Neither party to release credits.*

} It is not always that all the credits of the partnership can be immediately got in, or the effects disposed of. To meet this, an apportionment of the remaining effects and outstanding credits is adopted.

15. And that such of the said effects of the said partnership as cannot be conveniently sold or disposed of, and such of the credits of the said partnership as cannot be got in before the division of the said residue as aforesaid, shall be apportioned and divided between the said partners, their executors, administrators, or assigns; and each of the said partners, his executors, administrators [or assigns], shall well and effectually assign to and empower the other of them or his executors, administrators, [and assigns], to recover and receive all such credits and sums of money as shall be due and owing to him or them after such apportionment and division, and shall execute all such other acts and things as shall be necessary, in order to vest the sole right and property therein in the partner, his executors, administrators, or assigns, to whom the same shall then belong.

16. That after such apportionment and division shall be made between the said partners, neither of them, his executors or administrators, shall release, or discharge any debt or debts which shall, upon such apportionment and division, be allotted or assigned to the other of them, or in any respect interfere in the receipts or the recovery thereof.

A great variety of other clauses may be added, according to the wants of the parties. A clause that general releases shall be given, is sometimes added; but it is hardly necessary, for releases can be given upon the dissolut ion if thought necessary, and cannot

be enforced under the clause. Other regulations also are sometimes made, as those between solicitors respecting the custody of the deeds and papers belonging to different clients, and indemnities in that respect. Provisions also that, upon a dissolution, a retiring partner shall not carry on business within a certain number of miles, and provisions for the children of a partner to succeed him upon his death, are clauses which are frequently inserted, but have little connection with the subject of this treatise, and do not constitute the common provisions of ordinary partnership articles.

VI. The last division of the subject is that, which relates to the disputes of partners.

The deficiencies of the law of England, as to any remedy applicable to the disputes which arise between partners, are so great, as in most instances to amount to a denial of justice. The chief complaint is, that the courts will not, except in a very few instances, take cognizance of partnership disputes at all, unless a dissolution is prayed. In the next chapter, the deficiencies of the law of England, and the remedies proposed, are more fully discussed. We shall, therefore, defer entering into the particulars till then.

To avoid the difficulties in which they find themselves placed, partners have, in almost all instances, endeavoured to provide a remedy in the domestic tribunal of arbitration; but even in this the courts have declined, and not altogether without reason, to assist them. For the courts have drawn this distinction, and very properly, that they will enforce an arbitration, where the agreement refers to matters *past, and in the contemplation of the parties* when they agreed to arbitrate; but

that they will not enforce a general clause entered into by the partners, *when they were ignorant of the matters to be arbitrated;* that they will not deprive the partners of a resort to the courts of justice.

As the courts of equity refuse to interfere without a dissolution of the partnership, conveyancers and commercial men have further endeavoured to provide a remedy against the misconduct of their partners, by inserting what is called an expulsion clause. But this simply resolves itself into the tame and uncertain remedy of a dissolution of the partnership; and as all the covenants in a partnership deed are hardly ever exactly kept, even by the most accurate person, it is not quite certain that this expulsion clause may not be turned into a weapon of offence and annoyance, and that the offending partner may not take upon himself to expel the party, who really is the only one who has any reason to complain.

The clauses relating to the transgressions of partners are—

1. *The expulsion clause, that in case either of the parties transgress in any of the particulars enumerated, the other may dissolve upon notice.*

2. *That on breach of covenants a sum shall be forfeited as liquidated damages.*

The expulsion clause may be very useful in large firms where there are many partners who concur in the expulsion of one; but to put it in practice, it must always be coupled with another, giving the continuing partners an option to purchase the share of the expelled partner at a valuation. The non-recognition

by the courts of the corporate character of a firm, and refusal to interfere in the internal concerns of it, have hitherto rendered nugatory every attempt to expel a refractory member upon any other terms than those of a dissolution and sale of all the effects, and winding up of the affairs; and it is very doubtful whether it would be possible, under the present law, to carry into execution the expulsion on any other terms than sale, notwithstanding any clause that might be coupled with the expulsion clause to ensure its execution. The expulsion clause is commonly as follows:

1. Provided always, that if (contrary to the several covenants and agreements hereinbefore contained) either of the said partners shall neglect, or refuse to attend to, the said business of the said partnership, or shall wilfully neglect and refuse to keep proper and just accounts, or, without the consent of the others, engage apprentices or servants, or [*shortly running over all the clauses relating to the duties of the partners, and such others as may be thought necessary*], then, and in any of the said cases, the other of the said partners, if he shall think fit, shall be at liberty to dissolve the said partnership, by giving to the said partner who shall offend in any of the particulars aforesaid, or leaving in the counting-house of the said partnership, a notice in writing, declaring the said partnership to be dissolved. And the said partnership shall, from the time of giving or leaving such notice, or from any other time to be therein specified for that purpose, absolutely cease and determine accordingly, without prejudice, nevertheless, to the remedies of the respective partners for the breach or non-performance of all or any of the covenants and conditions contained in these presents, at any time or times before the determination of the said partnership. And the said partner to whom the said notice shall be given, shall

be considered as quitting the said business for the benefit of the partner who shall give the said notice; and the partner so giving such notice of dissolution shall be at full liberty, and is hereby authorised, to advertise the same in the *London Gazette*, without the consent of the other. That in case of the determination of the said partnership by either of the said partners by notice as aforesaid, the partner giving the said notice shall have the like option of purchasing the share of the partner to whom the said notice shall be given, as is hereby given to the surviving partner upon the decease of either of the said partners, and upon the same terms in all respects; and if such partner shall decline to purchase the share upon the terms aforesaid, then the said partnership accounts and affairs shall be adjusted and wound up in the same manner as is hereinbefore provided, in the event of the dissolution of the said partnership, where the surviving partner declines to purchase the share of the deceased or discontinuing partner.

2. *Liquidated damages.*]—The covenant that, upon the breach of any of the covenants, the transgressing partner shall pay to the other a certain sum as liquidated damages, may render these covenants available, and such a clause is frequently added, and this mode was recommended by Lord Eldon.* But there are many covenants, the breach of which do not admit of compensation in this manner, and it is attended with inconvenience even in those which do. For, if the liquidated damages are not sufficient to cover the damage, a jury will award no more,† and a court of equity will not restrain a

* In Street *v.* Rigby, 6 Ves. 818. See also Astley *v.* Weldon, 2 Bos. & Pul. 346.

† Lowe *v.* Peers, 4 Burr. 2225. Farrant *v.* Olmius, 3 B. & A. 692. See E. I. Co. *v.* Blake, Finch, 117.

breach of covenant, where liquidated damages are reserved.* But if the damages be certain as an omission to pay money, and the liquidated damages be more than the injury sustained, they will be regarded simply as a penalty, and the real damage will be measured by the sum omitted to be paid;† and there seems to be a doubt whether, when the articles are not under seal,‡ any damages can be recovered.

The following clause for liquidated damages is recommended by Mr. Jarman.§

2. And each of the said A and B doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the other of them, his executors and administrators, that in case he, the said covenanting party, shall fail, or neglect to perform, or observe, any or either of the covenants and stipulations expressed and contained in these presents (save and except such of the said covenants and stipulations as these present provisions cannot be legally or properly applied to), then that the said covenanting party, his heirs, executors, or administrators, will immediately thereupon pay unto the other of them, his executors or administrators, the sum of *l.* as liquidated damages, to be deemed and taken in full satisfaction and discharge of such covenant, and not in the nature of a penalty.

3. *Differences to be decided by the majority.*
4. *Arbitration clause.*

} The first is a clause sometimes inserted, and is

* Woodward *v.* Gyles, 2 Vern. 119.

† Kemble *v.* Farren, 6 Bing. 141, 3 Moore & Payne, 425. Charrington *v.* Laing, 6 Bing. 242. 3 Moore & P. 587.

‡ Randall *v.* Everest, 1 Mood & Malk. 41. But see 7 Jarm. Byth. 85, and Crisdee *v.* Bolton, 3 Car. & Pay. 243.

§ But see his observations in 7 Bythewood, 86, where he expresses his sentiments upon the inadequacy of such clauses, unless a distinct clause be attached to each separ te covenant.

useful in firms where the partners are numerous. It will not extend to a sale of the concern by the majority, unless by express stipulation to that effect.*

It is supposed by Mr. Chitty, that, in the absence of express stipulation, a majority must decide as to the disposal of partnership property; or, if no majority can be obtained, one or more partners may manage the concern as they may think fit, provided it be within the rules of good faith, and warranted by the circumstances of the case.†

3. That in all questions, differences, and disputes, which may arise between the said partners, concerning the said business, and the management and regulation thereof, or any act, transaction, matter, or thing relating thereto, the voice and determination of the major part in number of the said partners for the time being, shall be final and conclusive on the others, or one of the said partners; unless the others or other of them shall be desirous of submitting the determination of the matters in difference to arbitration, pursuant to the provision hereinafter contained in that behalf, and, within three days after such determination of the major part of the said partners shall be communicated to him, shall require a reference to arbitration upon the same; in which case, the determination which shall be made upon such reference to arbitration, shall be final and conclusive between the parties.

The arbitration clause is discussed at length in the next chapter; it may be as follows:

4. That in case any difference shall arise between the parties to these presents, their executors or administrators, relating to the said business, or the management of the

* Chapple *v.* Cadell, Jac. 537.

† 3 Chitty's Laws of Commerce, 234; Coll. 104.

same, or the settlement of the books and accounts thereof, or the settling, applying, or dividing, any of the profits, debts, or property belonging to the said partnership, or any other matter, cause, or thing, relating to or concerning the same, or any thing contained in these presents, and they cannot agree and determine the same between themselves, then, and in any such case or cases, the said parties, or their executors or administrators, shall forthwith nominate and appoint two disinterested persons, one of them to be chosen by each of the said parties, his executors or administrators; which two persons shall determine all such matters aforesaid, by their award in writing under their hands; and in case such persons cannot agree to determine the matters to them referred, within thirty days next after such reference, then the same shall be referred to and determined by such one other disinterested person as the two first referees shall for that purpose nominate and appoint umpire in the premises, who shall determine the same, by writing under his hand, within ten days next after he shall be appointed umpire; and the said parties, their executors and administrators respectively, shall and will stand to and perform the award, arbitrement or determination, which shall be made by the arbitrators or referees, or their said umpire, so to be elected and appointed as aforesaid, concerning the premises, without any further suit or trouble whatsoever; and it is hereby further agreed, that this submission to reference shall be made a rule of the Court of King's Bench, upon the application of either of the said parties; and also that no suit at law or in equity shall be commenced or prosecuted against the referees or their umpire concerning any of the matters or things so to be referred to them or him, as aforesaid, or concerning their or his award or determination.

The method of winding up partnership accounts, according to the mercantile view of the subject, has been already mentioned, and is very simple; viz., to make up a balance-sheet, and balance the accounts in the usual form, carrying the surplus of the stock account, in proper proportions, to the credit of each partner in the firm; whereupon the firm becomes debtor to each of the partners in the proportions declared; and the proper mercantile method of paying these sums due from the firm to each partner, is simply converting all the assets of the firm into ready money, and dividing it among the partners, in the proportions to which they are entitled; and the method adopted by the court of equity is similar.

"In the construction of partnership articles, it will be necessary," says Mr. Collyer,* "to bear in mind three important observations made at different times by Lord Eldon.

"1. Partnerships are regulated either by the express contract, or by the contract implied by law from the relation of the parties. The duties and obligations arising from that relation are regulated, as far as they are touched, by express contract; if it does not reach all those duties and obligations, they are implied and enforced by the law.†

"2. Partnership articles are read in a court of equity as not containing the clauses on which the partners have not acted.‡

"3. The *transactions* of partners are always to be looked at, in order that you may determine between them, even against the written articles, what clauses in

* Collyer on Partnership, 112. † 15 Ves. p. 226. ‡ 1 Sw. 469.

those articles will not bind them, provided those transactions afford a higher probability, amounting almost to demonstration.*"

These three rules are of equal importance to an accountant, in making up the accounts of a partnership, and to the court; but, in all matters of dispute, the rule is, the *intention* of the parties: for almost all disputes turn either upon matters of fact, or upon the intention of the parties.

Before we close this chapter, there remains one more important matter to which we must here particularly advert, as it relates to the ultimate winding up of the partnership accounts, and is considered a hardship, to be removed if possible.

After the dissolution of a partnership by the death, bankruptcy, or other retirement of a partner, if the remaining partners continue to trade with the capital of the original partnership, they are answerable to the estate of the retiring partners in respect of the *profits*.†

This was one of the most important points in the great cases of Crawshay *v.* Collins,‡ and Brown *v.* De Tastet.‖ In the former of these cases Lord Eldon expressed himself—"I cannot bring myself to think, that if it be clearly made out that a business is carried on with the property which belonged to a deceased partner, for instance, by the surviving partner, and no particular circumstances occur to vary the rule, the mere accident of one man surviving another can authorize him to

* 2 Bligh, 297. But see Smith *v.* Duke of Chandos, Barnard, 419.
† Brown *v.* Litton, 1 P. W. 141. ‡ 15 Ves. 218.
‖ 2 Rus. 341. 1 Jac. 284. Hammond *v.* Douglas, 5 Ves. 539.

say, 'I shall carry on the trade by the application of the funds of the partnership, and at the hazard of the funds of the partnership, and I shall have the whole of the profits, and you shall have no share of them.' There may undoubtedly be occasion for making claims in the nature of just allowances; but I cannot bring myself to think, that the interest which, at law, survives in a continuing partnership, survives in such a sense as to cut down the rule of equity, and that the continuing partners shall have to account for nothing but the value of what the share was at the time of the death or bankruptcy of the other partner. Even if you were to lay down the rule in that way, still you would have to ask yourself, How is that value to be ascertained? It cannot be done by the surviving partner saying, 'I shall take it at such a value.' There must be some way of valuing it so as to give the party retiring the complete value, and there must be some way in which this court will direct that valuation to be made."*

In the case of Brown *v.* De Tastet, his lordship held—That, though each case of a surviving partner retaining the property of a deceased partner and employing it in the trade, being accountable for the profits derived from it, must be decided upon its own special circumstances, yet, generally, that it was not to be held that the profits were to be divided in the same way, as if the partner had not died, or had not become bankrupt (though that might be decreed in some cases), but that the general principle ought to be this: that, inasmuch as it is quite competent to the parties to settle their accounts, and to mark out the

* 2 Russ. 345.

relation between themselves as C^{rs} and D^{rs}, so where there is a non-settlement of the account, those who choose to employ the property of another for the purposes of their trade, exposing it to all the risks of insolvency or bankruptcy, must be answerable for the profits; and he decided that De Tastet (who had done so) should account for the profit, but that all proper allowance should be made to him for the management of the business. And this was affirmed in the House of Lords.

Where it is doubtful, whether the subsequent profits have been made by the capital in which the retiring partner is interested, the court will direct an inquiry to that effect.*

We cannot conclude this chapter without remarking upon these two celebrated cases, that, in the decision of them, the important difference between the capital of a partner and a loan by him, was entirely overlooked, nor does the accountant's practice of allowing interest upon all advances, seem even to have been once adverted to.

The above case shows the importance to mercantile men of never resting, after the dissolution of a partnership, till all the accounts of it have been finally wound up and settled.

* Crawshay *v.* Collins.

CHAPTER VI.

PLAN FOR THE AMENDMENT OF THE LAW OF PARTNERSHIP.

THE great difficulties under which partners labour in England, have called the attention of the legislature to the subject, and a mass of very valuable information has been collected in the Report of Mr. H. Bellenden Ker to the House of Commons. As some legislative enactment must be shortly made to remedy the evils complained of, I have ventured in the present chapter to submit a plan for the consideration of the public.

The recommendation contained in Mr. Ker's report, goes only to the amendment of certain portions of the law of partnership, and it may therefore seem adventurous to set forth a plan which proposes to cope with all the difficulties at once. Nor do I presume to do this under an impression that reforms in the law can be accomplished by wholesale, nor in the expectation that the proposed plan is so unobjectionable, as to be capable of being altogether carried into execution. But when amendments are generally called for, it is at least some advantage to have as many suggestions as possible laid before the public; for from such

suggestions (crude as they often are) persons more skilled than the proposers are frequently enabled to select materials, which turn to advantage in the construction of the work.

To clear the way, I have devoted a considerable portion of the preceding chapter to an elucidation of the singular discrepancies which exist between the principles of the English law of partnership, and the principles universally acknowledged and acted on among merchants and accountants. The conclusion to which I have come from that examination, and upon which I have constructed the plan proposed in the sequel of this chapter, is, that almost all that is required is a recognition by the courts of law of a few of the fundamental principles of mercantile accounts; and from the few references that have been made to the decisions of Lord Eldon (among so many that might have been inserted), it is evident that the views of that great judge were chiefly directed to the same object; and that, notwithstanding the discouraging obstacles with which he was surrounded, he was striving, gradually, on every case that came before him, to remodel the practice and principles of the courts, and bring them into a conformity with the customs and notions of the mercantile community.

"The principal evils of the existing law," says Mr. Ker, "may be classed under three heads:—

"1. Those arising from the difficulties of suing aud being sued.

"2. Those arising from the difficulties which occur to partners in suing *inter se*, more especially as regards a resort to a court of equity in partnership disputes, and agreements to refer to arbitration.

"3. And, lastly, those arising from the rule, that any person taking an interest in the profits becomes liable as a partner."

To these may be added some others that have been mentioned in the report or adverted to in the foregoing pages, and which I humbly conceive may be all remedied together by the same plan. The other evils may be briefly enumerated, as—

4. Those connected with the real property of a partnership; viz., the class of representatives to which it passes, the real or personal, the incident of dower which attaches, and the joint-tenancy which frequently occurs.*
5. The singular law in bankruptcy,† that the joint estate shall be distributed among the joint creditors alone, and the separate among the separate creditors alone.
6. That an obstinate partner, or even his executors, can compel a sale of all the effects of the firm, to the ruin of the other partners.‡
7. That if, upon the death or bankruptcy of one partner, the others continue trading without winding up the accounts, the representatives or assignees of the discontinuing partners are entitled to share the profits.§
8. That there is no competent tribunal before which partnership accounts can be taken.
9. That executors and trustees carrying on a testator's business, are liable not only to the extent of the testator's estate, but to the extent of their own also.
10. That a sole surviving partner can set off a partnership debt against a private debt.‖
11. To which may be added, that an action of *tort* cannot be maintained by a public company, notwithstanding they

* Discussed ch. v. p. 69. † See p. 125. ‡ See p. 79.
§ See p. 171. ‖ Mr. Cole's Evidence, p. 79.

have an act of parliament to sue and be sued, if the defendant happens to be a shareholder.

In the following examination of the subject, the difficulties started, and the remedies proposed by others, are chiefly to be found in Mr. Ker's report.

I. The difficulties of suing and being sued arise from the rule, that all partners must be joined in a suit or action, whether they sue others as plaintiffs, or are sued as defendants; and, in many partnerships, especially large partnerships, this rule amounts to a denial of justice, owing to the difficulty—

1. Of ascertaining who are really partners.
2. Of ascertaining their full names.
3. Inconvenience of setting forth their full names.
4. Securities given to a firm are liable to be vitiated by a change of one of the partners.

To these may be added—

5. The difficulty of keeping the parties before the court, by reason of the abatements of the suit.
6. Where one partner is out of the jurisdiction of the court, the law requires the creditor suing to proceed to the outlawry of the absent partner, before he can compel those within the jurisdiction to pay their debts.*

To obviate the four first of these difficulties, it is proposed by Mr. Ker to extend the provisions of the Bankers' Act, 7 Geo. 4, cap. 45, and to enact, that, "henceforth, no partnership consisting of more than fifteen members (perhaps ten) shall be legal, unless it is formed by deed or agreement in writing, which shall state the names and abodes of all the shareholders,

* Mr. Gladstone's evidence, p. 51.

the time at which the partnership is to commence, the name of the firm, the business or purpose for which such partnership is formed, the principal place of carrying on such business, and the names of certain officers to be appointed by the company, in whose names the company should sue and be sued. That such partnerships should, within three months after the commencement thereof, make a return to the Enrolment Office of the Court of Chancery, stating the points before noticed as essential to be inserted in the deed or agreement for the formation of the partnership. That all changes in the place of carrying on the business, and all changes in the members of the partnership, by transfer or otherwise, or in the names of the officers of the company to sue and be sued, should be registered within three months, with liberty to the public to inspect the registry.

"That the company should sue and be sued in the names of the officers, and that a judgment obtained against the officers should be available against the property and effects of the individual members, as if the same had been obtained against all the members."*

This remedy, however, would be only applicable to large partnerships, and would leave the existing evils, relating to partnerships in general, unremoved; and Mr. Ker, shortly after, proceeds:—"As regards the evils arising from suing and being sued which would not be removed by the proposed bill, except when, from the number of members, the partnership was registered, the principal difficulty is in ascertaining the

* Report, p. 8.

names and address of all the members of a firm; if this is not done, a person sued as a partner pleads in abatement, and a new suit is necessary. The most effectual remedy for this would be to enact, that no persons should be entitled to carry on any partnership, under any style or firm, without registering the name of the firm, and the names and description of all the partners. This would enable any person to know who are the parties to be sued, and would consequently obviate any questions as to pleas in abatement, &c. It does not appear that there could be any substantial objection to such a measure; it would be no undue disclosure of names or parties in partnership transactions. If the law allows all partners to be sued, and allows a partner sued to plead in abatement, by reason of the non-joinder of the name of a partner, whom, perhaps, the creditor did not know was a partner, or whose description he could not ascertain, it would seem that the law ought at the same time to afford the creditor the means of ascertaining who are the parties to be sued."

This proposal of registering large partnerships might, in some respects, be desirable; but the ulterior bearings of a plan for a general registration of all partnerships, are extremely serious and prejudicial; for to remedy an evil, which occurs only when parties are obliged to have recourse to law, it imposes upon the trading community at large the burden of a general registration. Registers of the kind are deservedly unpopular, and always considered as a grievance; and a general registration of partnerships would be the same kind of annoyance as would be inflicted by a general registration of all landed property or conveyances.

Men do not choose to have their affairs exposed further than is necessary; and I conceive that an act for the general registration of partnerships or conveyances would be one of the most unpopular acts ever passed; and, within a week after it had passed, the combined ingenuity of the bar and of the city would be put in requisition to evade it. It would, moreover, open another wide and most annoying field of litigation, respecting the register itself. It would also inflict an evil of a most mischievous tendency upon the stability and extension of commerce. The extension of commerce is the grand object, to which the proposed registration is to be made subservient, whether it be for regulating partnerships in commandite, or simply facilitating the legal proceedings of commercial men. Many men of wealth have no objection to be *dormant* partners, but, commonly, they would rather forego the partnership than appear upon a public register as such.* A dormant partner will often prefer to pay even unjust claims to being known as a partner; or, at least, will never raise the objection in abatement. The result, therefore, of a general registration, so far from extending commerce, would drive out hundreds of men of wealth now actually engaged, and, at once, put an end to dormant partnership—a system, giving capital to industry, and responsibility to the creditor, wealth and security, at the same time, which could never be obtained under any system of commandite. Indeed, it seems to me, that a general registration of partnerships would not only be one of the most un-

* See the evidence of Mr. Swanston, p. 51.

popular measures, but a measure, whose operation would have a very fatal effect upon the commercial prosperity of the country.

There are other considerable difficulties attending a registration; viz.: Is it to be in London, or in each town or county?* If in London, are all the trifling partnerships in the country to be no partnerships, unless registered in London? Are all joint adventures to be registered? And where a firm has different establishments, are these to be registered in London or in the country? And where parties do not register, are they to be excluded from justice in the courts? If such were to be the case, ten years would hardly have elapsed before the decisions of the courts would have broken so many gaps through any act that may be framed, that it would become but a dead letter; indeed, the annoyance of a general registration would be so great, that, I suspect, it never would be submitted to. The objections, then, to a registration are such, that, if any other plan can be devised, surely such a burden, and such a general nuisance, ought not to be inflicted upon the commercial world.

To obviate the difficulties of suing and being sued, several other suggestions have been made. By Mr. Loyd it is proposed to adopt a registration, and to suffer the firm to be sued *as the firm*;† by Mr. Palmer, and several others, to appoint an officer, or some one of the partners, to be sued. By others it has been suggested, to suffer a creditor to sue at once any single partner in the first instance. The suggestion of Mr. Loyd, as to recognising the firm in its corporate

* Mr. Wilde's evidence. † See p. 36.

capacity as a firm, is more in accordance with the notions and feelings of mercantile men.* And there are a great many reasons, which will appear in the sequel, why this recognition of the firm, as a kind of corporation, should take place; for this simple measure would obviate almost every other difficulty, and indeed, as the corporate capacity of the firm is the true mercantile notion of a partnership (as we have taken so much pains to demonstrate in the preceding chapter), its recognition must be the first step towards a solution of the difficulties.

There can be no more difficulty in permitting a firm *to sue* in the style which it assumes, and which it inscribes over its premises, and with which it heads its invoices, than there is in permitting a corporation; provided the defendant can be assured he is not dealing with a shadow in the event of his defence succeeding; *i. e.* if he can be sure he has some one to resort to for his costs, and this can be easily arranged. Let a firm choose their own style and title, inscribe it over their doors and in their invoices, and abide by it, both to sue and be sued; but when they sue, they might if necessary, sue in the form of "Abraham Newland and others, trading under the firm of A, B, C, & Co.," where Abraham Newland is one of the firm, and an officer, *pro tempore*, a kind of a relator.

With respect, however, to being sued, there are other matters to be considered. Besides the common proposal, to register an appointed officer or partner to sue and be sued, it has been frequently suggested to allow any one of the partners to be sued at once for a

* See chap. v. p. 72.

debt of the firm, and thereupon judgment be obtained against the firm. To this it has been objected by Mr. Senior*—"That the power of selecting an obscure, or busy, or helpless person out of the whole firm, is capable, as experience proves, of being abused." At first sight, however, it would seem to be nothing more than bare justice that the creditor should be first of all settled with, and (as each partner has the power of disposing of the partnership assets, and could consequently pay the creditors out of them, if there were any) that no great evil could arise by permitting execution to issue against the firm, or any one of the partners; and that if any difficulty did occur, that such difficulty should not be laid upon the creditor, who is unacquainted with the private arrangements which have caused the difficulty, but upon the partners, who have themselves created it; and, further, it is urged, that all difficulty in that respect will vanish, if the courts will but take cognizance of partnership disputes; and, in short, that it must be for the best interests of the firm to have the creditor settled with in the first place, and as quickly as possible: and such is certainly the common sense view of the case, as well as the strict justice of it.

The proposition, however, is most unpopular among merchants and partners in general. It not unfrequently happens, especially in large establishments, that partners with small interests are entrusted with the management of local branches of a large concern. For instance, a large manufacturing house may have its head quarters at Manchester, and a branch in London,

* See p. 62.

conducted by a junior partner, for the disposal of its manufactures. Now the London partner might not be originally, but we will say might become, a dishonest man, might involve the partnership in debts to the amount of thousands, be sued, and conceal the actions; and the first intimation of all this by the house at Manchester might be an execution sweeping every thing away, without giving them the slightest notice, or time to avert or meet the evil.

Hitherto the law of England has thrown around the distant partner its protection, by suffering no action to affect him without due notice, inasmuch as it is necessary that he should himself be served with process. And it is a principle of the law of England, that men should be protected as much as possible, even from the effects of their own imprudence, more especially if they become involved in difficulty by any fraud of the parties with whom they are connected, though they may not be altogether without blame in being connected with such parties. It is therefore contrary to the spirit of the law to take away from partners that protection they have hitherto enjoyed. And though it may be nothing more than strict justice to the creditor to let him be satisfied at all events, yet if his interests can be protected without inflicting more injury than needful upon other parties, it is desirable that every indulgence should be granted to the distant members of the firm; and this may be arranged without much difficulty, by suffering a firm to be sued as "A, B, C, & Co." using the style painted upon their premises or heading their invoices, if it is intended only to put an execution into the place of business; or to be sued as "Abraham Newland and others, trading under the firm of A, B,

and Co.," if it is intended to take out execution against Abraham Newland individually, as well as against the firm, making it imperative in that case to serve him also with process, as well as serving process at the place of business. It might be varied to meet any of the more complicated cases by suing "Abraham Newland, Henry Haze, and others, trading in London under the firm of A, B, and Co., and at Manchester under the firm of C, D, and Co.," giving or omitting the names of as many of the partners as the creditor thinks fit, and not suffering execution to issue against any separate estate or person that had not been duly served. Any mistake in the style of the firm, or of the persons sued, might be obviated by the suggestions of Mr. Sweet and Mr. Coles, who consider that it is not desirable to take away the plea in abatement. But, in case of a plaintiff misstating the firm or individuals, not to allow a plea of abatement without the defendant attaching to the plea a statement of the style of the firm, and suffering the plaintiff to amend, upon which, costs might be given according to the merits of the plea; but to admit of the plea of abatement for no other purpose whatsoever. The suggestion of Mr. Palmer and others, of appointing an officer to sue and be sued, might also, by such firms as choose, be practicably adopted by always putting the name of the partner so chosen in the title of the firm.*

By the recognition of the firm, I believe every object with respect to suing and being sued may be obtained,

* It is scarcely worth while to refer to a practice that, by a large firm, might be adopted of putting all their names in the title of the firm to defeat a creditor. It would be more troublesome to themselves than to creditors, and might be met by allowing the creditor to sue "A B, C D, and others."

without having recourse to a registration. The only further advantage a registration might present is, that all the partners would be at once apparent, and the creditor might have the choice of any. This, however, is a matter for consideration, whether the advantages to be given to the creditor of ascertaining dormant partners, is to be weighed against the disadvantages of an entire abolition of the system of dormant partnership. The creditor sends in his goods on the faith of what he sees and knows of the firm, and if he sees and hears nothing of a dormant partner, he has no great reason to be dissatisfied if he should escape him altogether. This, however, rarely occurs in practice, for a dormant partner, if a man of wealth, commonly provides for the payment of every just claim; and if the debt is not paid, and matters are driven to extremities, he is sure to be detected in bankruptcy.

II. The second question that is discussed in the report, is that relating to the remedies of partners, as between themselves.

The courts have, except in a very few instances, declined to interfere in partnership disputes, or to take partnership accounts without dissolving the partnership. The cases upon the subject are now in such a balanced position, that the court of equity is quite free, without the interference of the legislature, to overrule the excluding decisions, and open their doors to the general reception of partnership disputes, if it be thought advisable.

The principal objection to the courts of equity taking notice of partnership disputes, is, that they would be overwhelmed with business if they took cognisance of

such disputes without a dissolution of the partnership.

This may be a very good reason for increasing the efficiency of the courts, but is certainly no reason why any class of the inhabitants of this kingdom should be debarred a legal adjustment of their disputes; for, where there is a wrong, the legislature is bound to provide a remedy.

A second objection, but of a less valid description, is sometimes urged, that it is useless for equity to interfere in partnership accounts, except upon a dissolution, because the accounts are daily varying. If the partners wish to have the accounts taken only for the last year, or up to what ought to have been the last rest, there can be no difficulty so to direct the reference to the master; but, even if it is required to take them up to the present time, an account might be decreed to the filing of the bill, or even to the date of the decree, and no parties would be so unreasonable as to wish any thing further; and, even if they did, the expense of continuing to have their accounts taken by the court, and the annoyance of such proceedings to the partners, as between themselves, would soon rectify that evil.

To protect themselves against the deficiency of the law, in disputes between themselves, partners have commonly been in the habit of inserting in their partnership articles, clauses, that all matters in dispute should be referred to the arbitration of two or more indifferent persons.

But though these clauses are so commonly inserted, the courts of equity refuse, and, indeed, upon very good and legitimate grounds do they refuse to carry these clauses into execution, in any matters which have

arisen *subsequently* to, or which were *not in contemplation* of the parties at the time when the agreement was entered into to refer disputes to arbitration. The courts draw this very just distinction, that they will compel the specific performance of the agreement to arbitrate upon any matter which *had arisen*, or was in contemplation of the parties; but they will not shut out any person from seeking justice of the court in a matter which he had not in view when he agreed to refer to arbitration. In short, they will not carry into execution a *prospective* agreement to arbitrate differences then *unknown*.

It is, indeed, impossible to anticipate the mischief which parties might entail upon themselves by excluding themselves from the protection of the court; for the lame tribunal of an arbitrator, which can seldom administer an oath or compel the attendance of witnesses, can never cope with frauds, which require the whole stretch of the inquisitorial and almost unconstitutional power of the Court of Chancery to ferret out and correct. In such cases as these, it is necessary that the courts should protect parties, even against the effects of their own imprudence.

Among the witnesses there is much difference of opinion as to the remedy to be applied. Mr. Ker reports as follows:*—"Although this evil is admitted, the opinions as to what may be the best and most efficient remedy are various: some conceive private arbitration to be ineffectual, and that it is often accompanied by more delay, and greater expense, than if the matter had been brought before a court of law or equity; on the other hand, others are of opinion that

* Page 12.

arbitration is essential to the settlement of partnership disputes, particularly those relating to accounts, which can never be settled by a court of law or jury, and which cannot be efficiently taken in the Master's Office, there being, in fact, no person in that office conversant with mercantile accounts. Upon the question, whether agreements by partners prospectively to refer all disputes to arbitration should be made compulsory, there appears, upon the first view, to be a considerable difference of opinion among the gentlemen who have been examined: the opinions of those connected with commerce being generally in favour of compulsory reference, and those of the lawyers (with some eminent exceptions) being generally opposed to it.

"But this difference of opinion, when further examined, will not appear to be so great as upon the first view might be supposed.

"The opinions in favour of such compulsory references seem chiefly to rest upon the insufficiency of the ordinary tribunals, as at present constituted, to afford redress in partnership transactions (a fact not disputed on the other side); while, on the other hand, the opinions against it seem to be chiefly founded upon (what is equally beyond dispute) the insufficiency of the tribunal of the arbitrator.

"Lord Ashburton, in his examination, has the following observations:—'Intricate commercial accounts are seldom understood by lawyers, and can never be made clear to the judges who hear the case; and such questions, in my opinion, are generally very imperfectly decided; the decision generally turning on some legal technicalities, and very seldom on the merits of the case.'

"Mr. Hodgkin says—'A circumstance which increases the evil of the present state of the law is, that whilst it denies to the parties their own tribunal, it provides them with a very inefficient, dilatory, and expensive one in its room.'

"Mr. Wilde says—'I must say, that, with upwards of thirty years' experience, I consider that of all the tribunals that were ever devised for deciding upon the rights of parties, with reference to the principle of their constitution, the mode in which the arbitrators are selected, the limited powers possessed by them, the appearance, without the reality, of legal inquiry, and the mode by which the arbitrators ultimately decide, nothing can be less beneficial to the public.'

"Mr. Tinney says—'I should observe, that arbitrators may constitute a good tribunal, where parties, desirous of avoiding litigation, have defined the points in dispute, and select their arbitrators, and arranged the terms of reference with a reciprocal desire of arriving easily at a just conclusion. But in case of compulsory arbitration, the parties would proceed in a different spirit, and the judges chosen would be often incompetent and partial, and might even be chosen for that reason; and I think the provision for an umpire, to be chosen by such persons, would afford a very imperfect remedy.'

"The result seems to be, that it would go far to reconcile those opinions, if either the courts of law and equity, or the tribunal of the arbitrator, could be rendered more efficient; and still further if any considerable improvement could be effected in both.

"With respect to the ordinary legal tribunals, the principal suggestion for the improvement of them,

derived from the evidences, would be the introduction of a summary jurisdiction for a reference of partnership transactions to official accountants or arbitrators.

"This suggestion has the concurrence of a large proportion both of mercantile and professional gentlemen who have been examined."

Among other suggestions, a chamber of commerce has been proposed, to which partnership disputes and accounts might be referred. This proposition seems to have been comparatively but little canvassed, or to have met with but little approbation. The evidence of Mr. Finlay* describes the Chamber of Commerce of Glasgow as a complete failure for that purpose, and states that he knows of only one case that had ever been submitted to it, as persons prefer to name their own arbitrators. Similar objections are taken to a court of partnership, which has also been proposed. Another great objection to such measures is the payment of the arbitrators adjudging. Is it to be by the job, or by salary? and out of what fund? Questions more easily proposed than answered. There is, however, a more serious objection, of a public nature, viz. The exclusive committal of different branches of the law to detached tribunals, introduces conflicting opinions, and variance of practice and principles. It is one of the great objects of the projected improvements to assimilate the practice of the courts with the customs of the mercantile world; but to entrust to a chamber of commerce, or a court of partnership, the decision of partnership disputes and accounts, would render their separation irreparable. The courts of equity and bankruptcy

* Report, p. 41.

must still proceed, for it is utterly impossible to detach the subject altogether from their jurisdiction.

Mr. Finlay also suggests a course adopted in Edinburgh and Glasgow, which is, not to make an establishment of particular persons, for the purpose of settling disputed accounts, but to leave it to the courts to select out of all the accountants and professional men; and he states, that at Edinburgh and Glasgow, where such a practice is adopted, the courts have never made an unsatisfactory appointment. To this an objection has been started by Mr. Swanston, who conceives that the nomination of an arbitrator by the courts would amount to the introduction of a new field of litigation, a sort of preliminary suit.*

The general leaning, however, seems to be, as Mr. Ker has reported it, that it would be more advantageous to render the courts more efficient. Arbitration would be still open in all cases not hostile, and in these alone it is useful; but in hostile cases, the suggestion of Mr. Tinney is one of the most practicable. Mr. Tinney says—"I am not sure if specific questions, including questions of account, could be brought before a court of equity, and the process were rendered easy, that it would not be better to have the determination of the court itself upon questions of right. Matters of account might be referred to an efficient accountant, who might be at liberty to refer questions of law incidentally arising before him back to the court, or even at once to call for the direction of the court on any such matters arising. As to disputed facts, I am afraid they must be disposed

* The second common law report suggested a proceeding, under a compulsory order, for the decision of the disputes by arbitrators, as a substituted tribunal.

of, as they now are by the court, upon evidence regularly taken, or by the aid of a jury upon an issue, or upon an inquiry taken before a master, or other officer. Perhaps means might be adopted of abridging the process prior to the original hearing."*

This proposal of abridging the process before hearing is also very generally advocated, as well as the reference of the accounts to official or other accountants. To avoid prolixity, we shall only cite further the opinion of Mr. Hodgkin, who says*—"I would suggest that, with a view to remedy these evils, in the first place, a more efficient mode of taking the accounts by courts of equity should be provided. I think that the courts should have the power, by an expeditious and summary process, to send the parties before official accountants, in the selection of whom a thorough knowledge of commercial transactions should be the principal qualification; and with the machinery of the courts thus improved, I think it might safely be enacted, that, whenever a case arose which fell within the terms of the private provisions for submitting disputes to arbitration, the court should be empowered, on a summary proceeding, either to direct the parties at once to enter upon arbitration under a rule of court, according to the suggestion of the common law commissioners, in reference to an actual cause, or, in the alternative, to send them before the official accountant if the circumstances of the case, either with reference to fraud, or the magnitude of the transaction, rendered such a proceeding, in the opinion of the court, more advisable. I think it would be desirable that, in any

* Report, p. 15.

legal enactment, the *onus* of showing that the case was not a fit one to be determined by the private tribunal of arbitration, should be thrown upon the party seeking to escape from the terms of his own contract; and that, at the same time, where a reasonable doubt existed, the court should thus have the opportunity of providing a remedy equally efficacious, and perhaps, on the whole, not much more expensive."

It is further a matter of consideration, how partnership accounts can be most efficiently brought before the court. Many of the gentlemen examined propose a summary process similar to that in which charity matters are brought before the court of Chancery, and, provided an account alone is required, there can hardly be an objection raised to such a course.

It is also suggested by Mr. Swanston, that in suits between one or a minority of the partners and the rest, there should be one individual to represent the majority of partners, in order to enable the court to pronounce a decree adversely, without requiring all to be defendants. As, if six out of a hundred are desirous to dissolve, the officer might represent the other ninety-four.

To remedy all these evils complained of respecting the inefficiency of the tribunals, I would beg to suggest,

I. That the court of Chancery should open its doors to the reception of all partnership disputes and accounts. For this purpose it would, in the first place, be only requisite to overrule the decisions which have gone to the effect of refusing the assistance of the court, unless a dissolution is prayed.

II. If the disputants complain of fraud, or require the judicial assistance of the court on any points of law, there is no possibility of cutting short the ordinary course of filing a bill. But if an account only is required, there is no reason why an order, directing an account to be taken before the master, should not be pronounced upon petition, in the summary manner that orders are pronounced upon charity petitions under the 52 Geo. III., c. 101., and giving the master power to examine the parties or witnesses upon interrogatories, or *vivâ voce*.

III. To avoid the difficulty hitherto made respecting suits where a *firm* and *the individuals of that firm* are concerned, a different contrivance of the court of Chancery might be put into requisition; that is, the machinery of a *relator*, who might have the conduct of the suit, and should be answerable for the costs, if he takes upon himself to bring the suit unadvisedly. By means of a relator, every partnership dispute might be conveniently brought before the court. If one partner thinks that any other is misconducting himself, let him use the name of the firm, and let the offending partner be sued by the firm at the relation of the complaining party. This suggestion would meet all the most complicated cases. In more simple cases, one party might sue another, or sue the firm, and join with the firm the parties whom he particularly requires to put in an answer to his suit, and the suggestions mentioned in p. 182 as to suing and being sued might be fully carried out.

IV. With respect to the machinery of the court and its method of accounting, I submit that it can be rendered much more efficient, much more satisfactory,

and much less expensive, and even less dilatory than any arbitration.

The first step I would suggest is an amendment of the machinery by the appointment of two or three* accountant masters, before whom the accounts would come upon a decretal order of the court made on the petition.

Now there are two matters of very serious complaint against the proceedings in the master's office, viz., the system of accounting and the dilatoriness of the proceedings.

The system of accounting by charge and discharge is the old exchequer practice, a remnant of the times when the only accounting parties were debtors to the king, or stewards and bailiffs to their lords; and the system is applicable only to accounts of a similar nature, such as debtors to their creditors, agents to their principals, trustees to their *cestui que* trusts, or the like; in all which one party only is the accountant, and the other a creditor. And this system has been maintained, though one of the rules of the court now is, that there must, except in cases of a fiduciary nature, be mutual accounts to sustain a bill. Now commercial and partnership accounts are altogether of a different nature. They are, indeed, mutual accounts: both parties are accountant parties. *Primâ facie,* one partner is no more a creditor than another; and the old system of accounting is not applicable, and in cases where the

* Several years ago an accountant master was proposed, but the proposal was dropped. One-fifth, at least, of the business of the court is accounts; and if twelve masters perform its ordinary duties, and partnership accounts are to be added, *semble* that three accountant masters would not be more than sufficient to discharge its business.

master requires a voucher for every item, the system of accounting becomes impracticable ;* and with the usual allowance of time devoted to each case, viz., an hour about once a fortnight, the taking of a twelvemonth's partnership accounts would be an operation of five years at least.

These dilatory proceedings of the court are a matter of most grievous complaint. It is, however, but justice to remark, that it is not simply the deficiency of the machinery of the court, or the erroneous system of accounting that has been used, to which the enormous delays are to be altogether attributed. For it must be recollected, that the accounts themselves which come before the court, are the very worst specimens of accounts that can be collected, or they would not come there. It is not possible to make up accounts which have been badly kept in a short time; much less if there be disputed items also to contend with. Merchants know perfectly well that, in a large concern, a little negligence on the part of the parties in keeping the books, will require a long time and close attention to detect errors, and even in accounts well kept, the difficulty of balancing the books is often very great. If, then, parties choose to neglect their own accounts, it is hardly fair to expect any court to make them up for them in less time than they could do it themselves.

To obviate these difficulties, I would beg to suggest the following plan:

When the case is before the accountant master, the

* Mr. Larpent proposes as a remedy, to allow the books, ordinarily kept, as evidence, and to oblige all partners, whether cognizant of the entries or not, to be bound, except only in cases of fraud; for each partner ought to be cognizant of the contents of the books.

delay in his office may be altogether obviated by allowing the parties to use their own diligence in forwarding their own accounts. Upon the first meeting of the parties before him, let the master hear what are the principal matters in dispute; let him direct one of the parties to take the books and, within a given time, make up the accounts in dispute, or so much of them as the other requires, and make them up in such a manner as the master shall, upon an inspection of the books, direct; and to bring in upon the second meeting, two copies of the accounts so made up. By this means the party will be left to use his own accountant, and his own diligence, to forward his own business.

Now there will commonly arise a preliminary question upon the possession of the books. One party, perhaps the defendant, may be carrying on the business, and it may be a ruinous affair to him to give up the books. To obviate this, let the master, upon a view of all the circumstances, direct whichever of the parties he thinks right, most probably the possessor of the books, to make up the accounts and bring them in. If the books are already brought in, to prevent falsification or risk in delivering them out, the master might intrust them, not to the defendant, but, to any respectable accountant the defendant might appoint, to make them up for him, upon security duly given; and, if suspicion in any manner attach, require the affidavits of the accountant. There will also be another preliminary question, respecting the way in which the accounts are to be made up, viz., by the Italian method, or by Single entry, or perhaps according to some contrivance which the parties themselves may have adopted. Now the master can hardly determine in what manner

accounts shall be made up without an inspection of the books, and, consequently, the possessor ought always to bring them in at the first meeting. The party making up the accounts ought also to have liberty to apply to master upon any special points, the opposite party being summoned to attend. Moreover, the costs of making up these accounts should be left to the discretion of the master, or of the court, either to fix them upon the firm, or upon the complainant, or relator, or defendant, so as to hold the costs *in terrorem* over any party calling upon another to make up, and bring in, more than is necessary.

At the next appointed meeting we will suppose that the possessor of the books has made up the required accounts, by means of his own accountants, and in the way directed by the master; and that he has brought in two copies (or one, as may be thought necessary): let the master then, with the parties before him, glance over them, and ascertain whether they are *primâ facie* properly, and in due form, made up; or whether it is necessary for him to send them back to be altered, or to insist upon the books themselves being brought in. If his injunctions are *primâ facie* complied with, so as to require of the defendant no further alteration, let the master give out one of the copies to the complainant, with directions to surcharge and falsify* these accounts within a limited time, with an order for the complainant or his accountants to have proper access to the books still continuing in the defendant's possession, at

* To surcharge is to add any additional items that can be proved, and to falsify is to strike out any that can be disproved.

his office or counting-house. If the defendant should object, or offer interruption, let an order issue to bring the books themselves into court.

At the third appointed meeting, let the master then pass all the items not disputed, reserving only the disputed items, which he can mark in his own copy. Upon as many of these as possible the master may determine off-hand, and reserve the rest to another meeting, delivering the accounts back to the defendant for his explanation at another meeting of these disputed items; at which meeting the master can finally determine all the rest, and strike the balance in his own copy; thus making up the partnership accounts. It should be observed, that greater latitude and a discretionary power should be given to the master, in respect of the items, which he should have the power to admit or reject, without a legal voucher for the proof, required in other cases (which, even in those, are sometimes very oppressive); for partnership accounts are not like the old exchequer accounts, or the accounts of bailiffs, &c., upon which the practice of the court has been founded; but, in partnership, both parties are accountant, and, therefore, greater latitude should be admitted. If this were admitted, there are very few items which the master could not determine between competitors at the third meeting; and, indeed, by five minutes' separate conference, he might ascertain at once whether there are any disputed items which either party is inclined to pair off; after which he might determine the others at that, or at least at another meeting.

When the master had struck his balance, he would make his report. Perhaps it would be advisable for the master, if not to award the costs of the proceedings in his

office, upon any call for the accounts to be taken further back than necessary, at least to report that such unnecessary trouble had been incurred by the party. The report might be confirmed and an order made, both upon the same petition, to pay the balance and tax the costs with the rest of the proceedings in the usual form. But the fact is, that nineteen cases out of twenty would terminate as soon as the master had struck his balance, or at least as soon as his report was made.

Such is the very simple plan I would beg to recommend for the consideration of the profession, and commercial men, and the public at large. Accounts of the most complicated nature might be taken in this manner within a very short space of time, at not much expense; and whatever delay occurred, or expense was incurred, it would be the act of the parties themselves, and within their own power to remedy. No blame whatever could on that account attach to the court or its machinery. But even this delay and expense might be diminished in many cases by using the books themselves (if they were not wanted), instead of bringing in copies, and also by giving, between the first and second meeting, power to the complainant to inspect the books, by which means, perhaps, it would be necessary only to bring a few disputed items before the master, instead of the whole series of the accounts. It is altogether a method which I am sure is practicable.

With this improved machinery of the courts, and the recognition of the firm as a kind of personage or corporation, I apprehend all the difficulties in partnership and accounts may, at least in a great measure, be done away with. To exhibit the complete bearings of the plan, I would beg to refer the reader back

to the enumeration of the difficulties in p. 175, and to observe the operation of the remedies proposed.

Of the difficulties enumerated by Mr. Ker, in p. 175,

1. The first, relating to suing and being sued as to third parties, would be cured by the recognition of the firm as a kind of corporation, recommended in p. 182, and this would be effected without the annoyance of a registration. All firms, great as well as small, would be put upon precisely the same footing, and all unnecessary pleas of abatement would be taken away.

2. "The difficulties which occur to parties in suing *inter se*, more especially as regards a resort to a court of equity in partnership disputes and agreements to refer to arbitration," would be entirely superseded by the reception of all partnership disputes and accounts in the court of equity; by the increased efficiency of the court, according to the plan detailed in page 198; by the short and summary process by which they would be reformed (a process much less dilatory and expensive than the preliminaries of an arbitration); by a method of taking the accounts much more satisfactory than any arbitrator could command, with a real and *bonâ fide* authority for carrying the decision into execution; by a tribunal, in short, to which the best and most efficient system of arbitration could have no pretensions to compare. And all this would be effected without any delay, beyond such as might be occasioned by the contending parties themselves. Arbitrations would of course be altogether superseded, and all partnership articles would be relieved of these clauses.

3. The rule, "that every person taking an interest in the profits becomes liable as a partner," I humbly submit should, with respect to clerks' salaries, annuities, and

the like, be more rigidly enforced; and the evasion, as to a sum proportioned to a share of the profits, should be overruled, but that it should not be interfered with by an enactment.* All these matters can be so much better managed in a different way,† that there can be no need, for the sake of clerks, to put in jeopardy the great and fundamental rule of partnership—that he who shares the profits shall replace the losses. With respect to the partnerships in commandite, we shall make some few observations upon them in the sequel of this chapter.

4. "The difficulties connected with the real property brought in or purchased by a firm," all vanish upon the recognition of the firm as a kind of corporate body. Whoever held the legal estate would simply hold it in trust for the firm; consequently all the difficulties respecting the dower, respecting the real representatives, and respecting joint-tenancy, would be at once disposed of, and the decisions would be placed upon logical principles, instead of resting, as they now do, upon the illegitimate assumption, "that if it were not so, all trade must stop." The firm would be entitled, as a body, to the beneficial interest. But as the firm is always a debtor to the partners exactly to the amount of all its assets, its property would, in the event of a dissolution of the firm, be like that of any other person possessed of an equitable interest in land—in debt to the amount of all his assets: the personal representatives would be alone concerned, and his widow and real representatives would have no interest in the matter. This recognition would also relieve the courts

* See the reasons given by Mr. Wilde, cited p. 143.

† See Lord Ashburton's evidence, cited in p. 142.

from all the anomalous decisions to which they have come: viz., that a partnership is a joint-tenancy without survivorship; that it is a severance of the joint-tenancy with respect to realty; that the realty purchased by a firm is to be considered as personalty, &c. Thewhole case in dispute would be a simple matter of fact or intention: viz., "whether or no the realty was brought in and adopted by the firm."

The remedy would likewise extend to the harsh rule, that the outlawry of a partner is a forfeiture of the partnership property to the crown; as it could then be only a forfeiture of the balance, due from the firm to the offending party.

5. The law in bankruptcy, so frequently commented upon by Lord Eldon, "that the joint estate shall be distributed among the joint creditors alone, and the separate among the separate creditors," would be put upon the proper footing by the recognition of the firm as a kind of corporation; but, in the present state of the law, this would require a distinct enactment: and such enactment should define to what extent the joint estate might prove against the separate estates of each partner, or whether it should be left the usual advantage of a creditor, having a joint demand against two or more different parties, who can prove first against one and then against the other.

6. "That an obstinate partner, or even his executors, can compel a sale of all the effects of the firm, to the ruin of the other partners," would, at the same time, be obviated and placed upon a different footing by the recognition of the firm as a firm; for, as the deceased partner is, in a mercantile view of the case, only a creditor of the firm by the amount of his share, his

death ought to be no direct dissolution, nor is there any necessity to make a sale. The simple remedy we would suggest should be a reference, by the summary mode of petition, to the accounting master to take the accounts of the firm, and ascertain the value of the share of the deceased, and a decretal order for the firm to pay it. This would be one of the most frequent matters of business in the accountant master's office; and this, being the known rule of the court, would supersede not only the most complex clauses in the partnership articles, but also some of the most oppressive and unsatisfactory decisions of the courts; and this should by enactment be extended also to a separate bankruptcy.

7. The difficulty that, "if, upon the death or bankruptcy of one partner, the others continue trading without winding up the accounts, the executors or assignees of the discontinuing partner are entitled to a share of the profits," has always been considered a great hardship, though the fault may rest as much with one party as the other. Most of the gentlemen, who in their evidence have opposed the introduction of commandite partnerships, have expressed an opinion in favour of a removal of the usury laws as a substitute. The removal of these laws involve so many considerations, that I should hardly be prepared entirely to accede to that opinion; but that they should be partially removed, for the purposes of commerce, I conceive would be unobjectionable, as, to the extent of admitting merchants' interest, to the amount of 7 or 7½ per cent. upon money lent for the purposes of trade; and this, I consider, would more effectually answer every purpose of the commandite law. And if this should be admitted, I would suggest that the point now before us

would be most effectually remedied by an application of the same principles: viz., that where the trading has been continued by the surviving partners, without making up their accounts and paying the balance due to the discontinuing partner, that the discontinuing partner should not be entitled to a share of the profits, but to merchants' interest, viz. 7 or 7½ per cent., which would be a sufficient inducement to the firm to expedite the accounts, or make a summary application to the court for that purpose. If the fault lies with the representatives of the discontinuing partner, let such an application to the court, and the usual affidavit of service of the petition, be a discharge of the merchants' interest, and let the money be paid into court by such instalments as the master may direct.

8. "That there is no competent tribunal before which partnership accounts can be taken," we trust has been already sufficiently disposed of.

9. "That executors or trustees carrying on a testator's business, are liable not only to the extent of the testator's estate, but to the extent of their own also," is a detached matter, and certainly a great hardship. It might be remedied by a special enactment; for the position in which an executor or trustee is placed, is sufficient to deter any one from undertaking the office for such a purpose. I submit that the same principles of a firm might be applied to this case, viz., that if the firm consists of, and is always given out as "the executors of the estate of AB," it should be a sufficient exemption to the executors as to their own estate, and that they should only be answerable to the amount of the testator's estate.

10. "That a sole surviving partner can set off a

partnership debt against a private debt," would also be rectified by the recognition of the firm.

11. An action of *tort*, under the recognition of the firm, might be maintained by the firm against any of its shareholders in the way already suggested.

The plan, therefore, which I propose is but little more than the recognition by the courts of one or two of the fundamental principles of merchants, and an amendment of the machinery and practice of the courts of equity. And, so far as I can see, it seems to me that it might be carried into effect with as little alteration of established principles and practice as can well be conceived. The only difficulty that occurs to me as of much consequence, is the distribution in bankruptcy; and it strikes me, that, with respect to that, the best course would be, to let the joint creditors have the advantage which, without any special enactment, they would acquire of being able to prove on the separate estates of all the partners.

The third question discussed in Mr. Ker's report is that arising from the rule, that any person taking an interest in the profits of a concern becomes liable as a partner.

This embraces two points: the first relates to clerks, agents, and the like, who are remunerated by a share in the profits, which renders them partners; the second refers to the partnerships with limited responsibility, which are admitted in France under the name of *partnerships en commandite*, and in America under the name of *limited partnerships*.

That part of the question which relates to clerks has been before sufficiently adverted to.

"With respect to the expedience of introducing the commandite partnership, the opinions of those," says Mr. Ker, "who must be considered as best able to form a judgment on this difficult and important question, are at variance. By far the greater number of those who have been examined are decidedly unfavourable to its adoption under any circumstances whatever."* And after giving a summary of the opinions, he reports, "It is clear that where such a diversity of opinion exists, it would not be expedient to recommend the introduction of the measure, at least for the present, and until further information as to the practical operation of the law in other states has been obtained."

The principal arguments in favour of it Mr. Ker has thus stated:

1. That capital is wanting in many districts for safe commercial enterprise, and is not so beneficially distributed as it would be if partnerships with a limited responsibility were allowed.
2. That, by the present law, the increase or productiveness of national capital is retarded or diminished.
3. That much additional capital, which is now lent on foreign loans, would be employed in the commerce of this country.
4. That the combination of capital and skill would be best obtained by allowing limited responsibility.
5. That laws having the effect of compulsory protection are mischievous; and that many respectable firms would be enabled to obtain advances of capital on terms less disadvantageous than those on which it is sometimes procured from large commercial houses, who, on making any advance, either stipulate or expect that, in addition to the payment of the highest rate of interest, the borrower shall also

* Page 22.

purchase a portion of his goods from them, a mode of dealing rarely favourable to the borrower.

6. And that, in fact, the security to the creditor would often be greater under such a system than it is at present, where the trade is carried on either by means of credit or with borrowed capital.

To which may be added—

7. That the firm of A and Co., backed by B to the amount of 10,000*l.*, is more satisfactory, and can be better appreciated by the public than A and Co. alone; and that pretended advances by B, or the fraudulent withdrawal of his capital, can be prevented by throwing upon him the burden of proving that he has complied with the stipulations of the registered deed, or even by penalty.*

8. That it would bring additional capital into commerce; it would favour the enterprise of men of talents with insufficient capital, and, generally speaking, under proper regulations, would furnish sufficiently substantial and secure commercial establishments.†

"Commandite," says Mr. Coles,‡ "holds an intermediate station between joint-stock companies established by charter or act of Parliament, and the less extensive character of ordinary partnerships. By its means large and efficient supplies of capital may be obtained, and put into operation, free from the monopoly, and uncontaminated by the spirit of share jobbing, which chartered companies too frequently occasion. It excites enterprise without producing gambling; it encourages manufactures without introducing scheming. Partnerships of this nature are frequently formed, where practical science and ability reside in persons who have not the pecuniary means of bringing their talents and skill into operation; but who, by the aid of such an association, may be enabled to do so, to the common gain of those who thus associate themselves, and to the great promotion of the public good."

* Mr. Norman, 35. † Lord Ashburton, 46. ‡ Page 81.

9. That the greatest evils of commandite partnership are not so hazardous as where the person who lends the capital takes a mortgage, or warrant of attorney, and the creditor knows nothing of this transaction.*
10. That fraudulent abstraction of capital is prevented by the French law, by compelling the commandite partner, in case of insolvency, to refund even his previously received profits.† Mr. Senior thinks, the refunding of the last six years' profits in such a case would be sufficient.
11. That it would enable a number of small capitalists combined to wield a capital equal to that of a large capitalist.‡
12. That it is an excellent method of providing for widows of commercial men who have been concerned in the firm.
13. That making every partner liable for all the responsibilities is oppressive, and deters persons from entering into commerce.

The objections upon the other side are the following:

1. That, in England, capital is exuberant, and that there is so little want of capital or enterprise, that even the most idle speculations find ample means, and that talent never stands in need of capital.§
2. That all the disadvantages enumerated in 2, 3, 5, of the preceding arguments might be much better obviated by an alteration of the usury laws; and that the system of country banking, in a great measure, supplies the deficiencies.‖
3. That concerns committed to the management of directors are never conducted with the same care as private establishments; and such must commonly be the case with commandite partnerships.
4. That it would lead to overtrading.

* Mr. Senior, 64. † Ib. ‡ Ib.

§ This is a common opinion of almost all the witnesses who are opposed.

‖ Mr. Lloyd.

5. That it would give false credit. In France, the parties are generally known who constitute the partners *en commandite*, and being so known, credit is given from the weight of their names, without any minute reference to the actual amount of their liability.*
6. A commandite of 10,000*l.* registered may obtain credit of a million, and involve thousands in the ruin which, according to all probability, would fall on some of their hazardous enterprises.†
7. A registry would be no protection or guide to a creditor; for a person in 1836 might embark 5000*l.*, which might be lost before 1838, yet any one searching the register would still find that person registered as liable for 5000*l.*‡
8. As to the general working of this system, Mr. Larpent has remarked, that—"Removing the risk of general liability in partnerships would give, in the existing state of society, accommodated as it now is to the law, a tendency to separate still more than they are now, the partner bringing capital from the partner bringing labour, to make them both less dependent upon each other, and, in the working of the partnership concern, rendering each less checked by the peculiar circumstances affecting them. The idleness of the capitalist is now checked by the energy of the working partner, and the speculation of the latter is checked by the risk in which it involves the monied partners, who would chiefly suffer from the loss. The natural laziness of mankind would induce persons possessed of capital to unite in large partnerships for the most ordinary matters of business, doing little or nothing themselves, and leaving the management to subalterns.

"The check upon this is the unlimited responsibility they incur under the existing law. The result of thus superseding industry in the principal, would be to deteriorate the talents and character of the mercantile and manufacturing classes.

* Mr. Palmer, p. 43. † Mr. Finlay. ‡ Mr. Wilde, p. 57.

"If the manager be a clerk upon a salary, he can rarely aspire to be a principal, for no savings from a salary would lead to the possession of means sufficient to become a capitalist. Individual exertion and skill, producing a smaller reward, would have less encouragement; and their fruits, new discoveries and a larger result in profit, would be less frequent, to the injury of society in general."*

9. The following observations of Mr. Tooke bear strongly upon the same point:—"There seems to prevail, among those who incline to the introduction of the commandite system, a vague notion that something like a right exists, on the part of individuals, to circumscribe their liability, as the condition of their embarking a certain sum in trade; and that it is only by the special interference of the law of partnership that they are prevented from exercising that right; that the law is an interference with what otherwise would be the free, and probably, therefore, the best direction of capital in trade; and that the permission to invest in *commandite* is consequently only the removal of an impolitic restriction. I am not sure that I have heard the doctrine broached in these very terms; but the arguments commonly used seem to imply it.† On the slightest reflection, however, it must be obvious that the commandite is a privilege, and has not the shadow of foundation as a natural right. The general, if not the universal, rule of commercial transaction is, that the individual is liable, to the full extent of his means, for the engagements entered into by himself, or on his behalf, or jointly with others; and it is only by the interposition of a special law that he can be shielded from the more general one of being answerable, in all cases, by the whole of his property, and, in some cases, by his person, for such engagements. This interposition, then, most assuredly must be considered as conferring a privilege; and, if I understand the question rightly, it is whether such privilege is to be confined as heretofore, or is

* Page 40. † See No. 5, page 208.

to be granted generally for purposes of private trade to any applicants, within certain limits of numbers and amount, upon their complying with the prescribed forms of registration, &c. On the latter supposition, what would be the consequence? A person possessed of certain property, being desirous of increasing his income beyond mere interest of money, by embarking a given sum in trade, without risking the remainder of his fortune (which would be at stake if he employed it himself, or by a clerk or agent), would only have to invest the manager of it with the character of a partner in *commandite*, in order to have the benefit of all the chances in his favour which might attend a hazardous undertaking (involving transactions on credit); while, if all the adverse chances should occur, so as to entail losses to the amount of twice or three times the capital (no uncommon occurrence in trade), he would be accountable only for the sum he had subscribed. This mode of business holds out such advantages over a common partnership, that, unless the formalities prescribed should prove to be too troublesome to be generally complied with, it would be extensively acted upon, and might gradually supersede the latter mode for all establishments trading on a capital within the prescribed limits."*

10. The following opinion of Mr. Lloyd is a further illustration to the same effect:—"The commandite principle seems to involve something very nearly approaching to injustice; inasmuch as, in the case of insolvency of a concern, it tends to remove a portion of the loss, which must be borne by some party, from those who have voluntarily engaged in the concern, who have had the means of watching and controlling its progress, and who have been the sole participators in the benefits of its success, for the purpose of throwing it upon those who have had no means of insight into the state of the concern, no power over the management

* Page 34.

of it, and no share in its advantages. The commandite partners may have embarked a very small share of their property in the concern, and may, therefore, be very slightly injured by its failure; whilst those to whom it is indebted may be very seriously injured, even to the extent of ruin.

"A system which admits of such consequences ought not to be adopted without some strong necessity."

11. Mr. Lloyd sums up his objections as follows:—"1. That there does not exist, under the present system, any evil of serious amount which the proposed change would remove. 2. That I do not perceive any additional advantage of importance which it would secure to us. 3. That, in the peculiar condition of this country, the advantages of the commandite system would be less, and the evils greater, than in most other countries; and that the inconvenience arising from the derangement of the existing habits and system of business would be considerable."

12. Remove unlimited responsibility, and you remove vigilance and prudence: and the comparative safety of reaping all the benefits at a small venture, and shifting all the loss upon others, will render trade nothing but gambling.

13. The following opinion of Mr. Hodgkin appears to be intended for a reply to the opinion of Mr. Senior, expressed in No. 9, p. 210:—"The main distinction between the case of the capitalist, who advances the funds by way of loan, and the secret partner, is, that in common estimation the former, when his position is known (which it generally is to a considerable extent) lessens *pro tanto* the credit of the house, and thereby puts the public upon their guard; whilst the existence of monied partners with restricted liability, upon the new principle, would, I think, practically have a tendency to create too high an idea of the resources of the house; to which fallacy the existing usages and notions of trade would for a long series of years contribute, in spite of the provisions of the law itself. The experience of France, too, so far as I can gather it from the writers on the subject, tends to show that

the plan of secret partners of this description is extremely liable to abuse and fraud."*

Mr. Wilde also speaks to the same effect:

"I think it would be better, instead of the advance of a limited capital, that an individual should be allowed to advance into a partnership any sum, at a particular rate of interest; that interest might be regulated by the profits of the trade or not, the party recording, as is the case now with warrants of attorney and judgments, such advance, with all the rights of a creditor, except that in the event of bankruptcy or insolvency he should not be a creditor till all the other debts had been paid. It at first would appear that this is the same thing as the allowing the advance of a limited capital; it is not so: for, in allowing the registration of a limited capital, it apparently tells the public that there is 5000*l.* in the trade; but, in the other case, the persons who are dealing with the trade have the opportunity of knowing that there is a claim of 5000*l.* upon it, and, therefore, it is their own duty to judge for themselves whether they will trust the partnership, knowing of that debt. Of course, it is necessary not to forget the law of usury."†

14. And, upon the same point, Mr. Tinney remarks—"That the effect of admitting partnerships in commandite would not be the same as the repeal of the usury laws; for no trade could derive credit from the fact of being a large debtor at a high interest."

15. To these, perhaps, may be added, that commandites cannot be introduced without a registration, which, if extended generally, would be the destruction of the much more valuable trading of dormant partnership.

We may observe further, that the gentlemen who are in favour of its introduction seem generally to take it for granted, that in France and America its practical operation is beneficial: Mr. Hodgkin,‡ however, seems

* Pages 69. † Pages 57. ‡ Pages 68, 69.

to intimate that the experience of the French is not very satisfactory. There is, however, a distinction generally recognised, that a measure which may be applicable to a country distressed for capital is very inapplicable to a country like England, in which capital abounds. In a country like France, where levelling principles have destroyed large fortunes, it requires the union of several fortunes to make what in England would be but a moderate capital for carrying on any considerable concern: hence France abounds in joint-stock companies, with capitals of four, six, or eight thousand pounds, in shares of four, six, or eight pounds each. Such concerns are, of course, commonly failures to the projectors and shareholders, for all the profits are swallowed up in the ordinary outgoings; and they can hardly be beneficial to the country.* Here, where mercantile houses are in the habit of drawing cheques daily to the amount of the whole capital of these petty joint-stock companies, we smile at these little doings in France, which we observe immediately beneath our eyes, and we let them alone: but the vast projects set on foot in America have dazzled us. Their companies were upon a scale of almost reckless magnificence; and the land is covered with roads, canals, and public works. In these we have deeply speculated; and upon us the loss is principally shifted. We have been duped both ways: for such of us as were partners in commandite, or shareholders, have lost their capital, and such as were creditors, have lost their cash and goods. America, no doubt, is benefited, but England has dearly paid for it.

* For several of these observations, see an interesting article in "Blackwood," July, 1838, p. 42.

There is yet another opinion, that commandite partnerships might be permitted in the connexion between houses here and branch houses in the colonies. As a mere matter of public policy in favour of the advancement of the colonies, it might be advantageous to the colonies, but could it be honestly permitted upon that ground? No doubt the colonies would be benefited, if matters were carried on with a free and open hand, just as America has been benefited at the expense of England. But who is to pay for these benefits? If the projects and concerns conducted in the colonies succeed, the parties who are to reap the direct profits are of course the projectors and partners in commandite. But if they fail, who is to pay the loss? Why, the partners to the extent of their subscriptions, perhaps, about one-fourth, and the rest must be borne by the creditors; for the partners *in solido* are commonly men of straw. In fact, there is no reciprocity in this system of commandite; for if the balance comes out upon the credit side of the profit and loss sheet, it is to be divided between one set of parties; and if it comes out on the debit side, it is to be divided among another set. In short, the system of commandite appears to me to be something very nearly approaching to a fraud.

I would not be understood to apply this to every joint-stock company with restricted responsibility. There are certain undertakings of public utility in which it is necessary to admit shares, with a limited responsibility of the shareholders. Without such a system, canals, railroads, bridges, and other public works could hardly be constructed. But these are very different matters, or at least ought to be con-

ducted upon a very different plan, from any trading partnership. Instead of speculating and running into debt, they ought to be conducted upon the plan of simply calling for an instalment and spending it, and then calling for another; so as to be altogether a ready-money concern. But a trading company with limited responsibility, is a matter that, I am at a loss to reconcile with any sound principles of policy.

But little allusion has hitherto been made to the accounts of joint-stock companies, nor is it necessary, as their accounts must of course be similar to those of any other house, except the anomaly above mentioned of sharing the profits among any set of men, and dividing the losses among another. So long as the company is solvent, the accounts will be the same, and the profits shared among the partners; but when the concern becomes insolvent, an accountant, finally making up the accounts and balancing the books, may save himself the trouble of looking after the partners, and may at once debit the creditors with the loss, or, in other words, declare a dividend among them.

Commandite has hitherto been granted in England as a privilege, either by charter from the crown, or by act of Parliament.

"These bills," says Mr. Ker, "may be divided into four classes:—

1. Those which confer merely the power of suing and being sued.
2. Those which confer, in addition, the privileges of restricted responsibility.
3. Those conferring, in addition, peculiar powers, such as to purchase land, &c., but not such compulsory powers as are contained in railroad, canal acts, &c.
4. Those conferring, in addition, compulsory powers."

Mr. Kerr continues: "Now, with respect to the

whole of the first class, all question as to them will be removed by the bill proposed below [which passed as the act 1 and 2 Vict. c. 73]. With respect to the second and third classes, it is now in the power of the crown, either by a charter of incorporation or letters patent, to grant all the privileges required; but the difficulties which arise with respect to charters, and as to the construction of the powers to be granted by the Patent Act, 4 and 5 Will. IV., c. 94, together with the expense attending the application for letters patent, is, in a great measure, the cause of driving parties to Parliament for bills to grant powers, which the crown has already the authority to confer.

"This inconvenience, it is conceived, might be easily remedied by the introduction of a bill which should effectually remove all doubt as to the operation of the statute relating to the granting charters and letters patent, in which the powers to be granted in all charters or letters patent giving limited responsibility, &c. should be clearly defined and set forth, and so that the several powers to be granted, all the conditions as to registry and transfer of shares, might be at once referred to in the letters patent or charter. This measure would leave to the advisers of the crown merely the consideration of the expediency of granting the privilege sought, without the inconvenience of considering in detail the effect of the different provisions which parties had inserted in the drafts of their proposed charters; it would have the effect, also, of very materially abridging the length of the charters or letters patent. And, further, by the powers and provisions being uniform, whenever it became necessary to submit them to judicial interpreta-

tion, the decisions of the court would apply to the whole class, and would have the effect of forming an uniform system of construction applicable to all similar instruments."

The bill proposed has since been carried into effect by the Letters' Patent Act, 1 and 2 Vict., c. 73, enabling the crown to confer by letters patent all the powers but the compulsory clauses, to obtain which a bill must still be sued in Parliament. But the act is defective, and an act to amend the Letters' Patent Act was brought in a few days afterwards, but failed; and it seems no letters patent have yet been granted under the act.

To an act like this for facilitating the grant by the crown of the commandite privileges, I can see no objection, unless such privileges are unduly or inconsiderately granted; for it leaves the question in the right position, viz., the general rule unlimited responsibility, and limited responsibility the exception, a privilege to be granted only on sufficient grounds.

CHAPTER VII.

FIDUCIARY ACCOUNTS.

Thus far we have treated of the accounts of persons transacting their own affairs, and dealing with their own money. But there is another most important class of persons who are accountants for the property of others.

Of these, stewards, receivers, committees, and the like, are intrusted with the *income* of other people's property; while executors, trustees, assignees, and, in some cases, mortgagees, are intrusted with the disposition of the *corpus*.

All these persons are answerable to the parties whose property they manage; and the courts of equity are the tribunals before which they may be compelled to account.

A receiver is a person appointed to receive the rents, issues, and profits of land or other property; and to manage and take care of the estates and property of other persons, without power to make any disposition of the corpus.

Noblemen and persons of large landed property frequently, in addition to their land stewards, who

manage the details of their property, appoint receivers to superintend the concerns, and collect the rents of their estates.

But receivers, more properly so called, are appointed by the Court of Chancery pending any suit, where it does not seem reasonable that either of the contending parties should receive the rents and profits. The court, also, appoints receivers in gross cases in suits between partners in trade for the purpose of winding up, but not for the purpose of continuing the concern. It likewise appoints receivers to take care of the estates of infant wards of court, as well as guardians to protect their persons.

The accounts of all these persons are similar; and though it is unnecessary for a private steward or receiver to keep his accounts according to the same mode prescribed by the Court of Chancery, yet it is often advisable for him so to do, or, at least, to attend strictly to the essential rules prescribed, as he may be called upon some time or other to account for his stewardship before the court.

The order for the appointment of a receiver in a suit is commonly obtained upon motion, or, in the case of infants, upon a petition presented to the court; and it directs "a reference to the master to appoint a proper person to be receiver, and to allow him a salary for his care and pains therein; such person, so to be appointed receiver, first giving security (to be approved of by the master), duly and annually to account for and pay what he shall receive." The order further directs "the tenants to attorn, and to pay their rents in arrear and their growing rents to such receiver, and that the said receiver shall manage, as well as set and let the

said estate, with the approbation of the master; and pass his accounts and pay in his balances, from time to time, and it should further direct the investment of such balances in the funds by the accountant-general."

After the appointment of the receiver, he and his sureties enter into recognizances to the Master of the Rolls and a master in Chancery, duly to account for what he shall receive in respect of the rents and profits of the estate annually, or oftener if required, and, from time to time, to pay the balances which are reported due into court.

A receiver is allowed a salary usually of 5 per cent., but in the discretion of the master.

A receiver has very little discretion allowed him; and he has not the power, without the sanction of the court, to let the estate for a term of years; nor can he, without an order, bring an ejectment,* nor distrain for rent in arrear beyond a twelvemonth,† nor lay out money in repairs beyond a small sum.‡ His course is very plain. He has only to collect the rents, keep the accounts, and pay the balances annually into court, and to expend nothing extraordinary without an order of the court.§

The little discretion allowed to a receiver in Chancery is one of the main causes why the property, over which a receiver is appointed, is so frequently found in such a state of proverbial dilapidation.

The care and custody of idiots and lunatics is not in

* Wynne *v.* Lord Newborough, 3 Bro. 88. 1 Ves. 164. 15 Ves. 283.

† Brandon *v.* Brandon, 5 Madd. 473.

‡ See *infra*, p. 275, § vii.

§ Fletcher *v.* Dodd, 1 Ves. 85. Waters *v.* Taylor, 25 Ves. 25.

the Court of Chancery, but is a branch of the king's prerogative, and is usually delegated to the Lord Chancellor, under a special commission from the crown for that purpose. Where, upon a commission issued, a person is found idiot or lunatic, the usual course is for the Lord Chancellor, by letters patent under the great seal, to commit to one or more persons, during pleasure, the custody of the *person* and management of the *estate* of the lunatic.

Two different persons are usually, but not always, appointed for these purposes. The party to whom the care of the lunatic's *person* is committed, is called the *committee of his person;* and the party to whom his *property* is intrusted, is called the *committee of his estate.*

The committee of the estate of a lunatic is required to enter into recognizances to the crown, with two sureties in double the amount of the annual value of the rents and profits of the estates, and of the outstanding property, for answering and duly accounting for them annually, or oftener if required.

The court directs a reasonable allowance for the maintenance of the lunatic and his family, to be paid by the committee of the estate to the committee of the person.

Generally, a committee is not allowed a salary, but, under peculiar circumstances, the allowance for maintenance has been increased, so that the committee of the person might thereby be in some degree benefited; or a reasonable compensation for trouble has been allowed him.*

* *In re* Annesley, Amb. 78.

The form and manner in which the accounts of receivers and committees are made up and passed, are similar. A receiver, however, must cause his accounts to be passed at the time fixed by the master in his report appointing the receiver; whereas, to pass a committee's account, it is necessary for him to present a petition to the chancellor on each particular occasion.

For the form of a receiver or committee's account, see Appendix XIV.

There is, however, some little variation in respect of the forms used in the different masters' offices; the forms used in any particular office may be had at the office.

The debit side, or *Charge* (as it is called in the offices of the Court of Chancery), contains, in separate columns, the tenants' names, the situationand description of the premises, the arrears of the preceding year, the rents due, the rents received, and the arrears due; and a column is left for remarks or observations.

The discharge or credit side of the account will consist of his payments of every allowable description; allowances to tenants, the receiver's salary, and the balance. The account is passed by the master in the usual manner.* When a receiver's account has been settled by the master, a summary of it, viz. the credits deducted from the debits, is set down, and the balance to be paid by the receiver or committee is ascertained.

The master provides two books, one of which is called the Master's book, and is retained in the master's office, and the other, a duplicate of it, is given to the receiver. In these two books the account is entered,

* See *post*, page 263.

after the master has passed it. At the foot of the account in the master's book is entered an affidavit by the receiver of the correctness of the account. This is sworn to by the receiver in the master's office. The master then signs the accounts in the two books, and delivers one to the receiver. The master prepares the draft of his report. In this report, he states the amount due from the receiver, and fixes the time in which he is to pay in the balance.

Where a receiver neglects to bring in his accounts, or pay the balances at the time appointed, his salary will be disallowed, and interest at 5 per cent. per annum upon the balance in his hands will be charged against him. His recognizances, also, may be put in suit against him, or he may be committed to the Fleet: but to have him committed, a previous order must be obtained, that he bring the accounts in (or pay in the balance) by a certain day, or stand committed.* And a receiver who accounts under an order for an attachment must pay the costs of passing his account, and will only be allowed an abated rate of poundage at the discretion of the master.† Where, also, a committee makes default, his recognizances may be put in suit, and he is also liable to an attachment.

In West-Indian estates, a *manager* is appointed in the West Indies, and a *consignee* here, to whom he is to consign.‡ The consignee enters into recognizances, and passes his accounts like a receiver; but his recognizances extend only to accounting, and not

* Wilson *v.* Newman, 4 Ves. 143. 1 Sim. 499.
† Trapaud *v.* Cormick, 1 Hog. 245.
‡ Quarrell *v.* Beckford, 13 Ves. 377.

to the management of the estate.* A manager may be called upon to give security duly to account for the produce of the estate, what he receives, and what he applies there, and for consigning, so far as the management of the estate requires; but the manager has a discretion as to what is to be applied there.†

A manager in the West Indies may set, let, and expend for repairs without an application to the court.

To a certain extent, a *bankrupt* stands in the position of a party accounting for other people's property; inasmuch as his property and effects no longer appertain to himself, but he must deliver every thing up for the benefit of his creditors to his assignees. He must make a full and true disclosure, upon oath, of all the estates and effects of which he is possessed, or in any way interested; he must deliver not only all his real property and personal goods and chattels, but all the books, papers, and writings relating thereto. He must further swear that he has not concealed or embezzled any part of his estate, real or personal, nor any books of accounts, papers, or writings, relating thereto, with an intent to defraud his creditors.

The form of an official balance-sheet of a bankrupt is given in Appendix XV. And a similar form may be adopted by an insolvent, or a person assigning to trustees for the benefit of his creditors, though it differs from the ordinary Balance-sheet of a trader in form, inasmuch as, instead of being a simple balance-sheet, it comprises in separate schedules the Stock-account and Profit and loss account combined.

The only difference is, that in the bankrupt's official

* Morris v. Elme, 1 Ves. 139. † Ib.

schedule, there is no estimate of value affixed to the different items, as is always the case in an ordinary balance-sheet; nor is it necessary, as every item is forthwith to be sold.

Upon a bankruptcy, insolvency, or full assignment for the benefit of the creditors, the assignees become entitled to all the effects, to the same extent as was the bankrupt. The inventory which they receive is, in fact, the inventory of all the effects they are to get in, sell, and distribute. Having accepted the trust, they become accountable before the court for a proper discharge of it, and they must render their accounts to the creditors, or to the courts if necessary.

The assignees of a bankrupt are compelled to deliver to the commissioners of bankrupt, upon oath, their own accounts in writing; and the commissioners are to examine and compare the receipts with the payments, and ascertain what balances have, from time to time, been in the hands of the assignees respectively. The assignees are allowed to retain all such money as they shall have expended in suing and prosecuting the commission, and all other just allowances.

The form of the assignees' accounts is simply a D^{r} and C^{r} account, containing upon the debit side all the sums received, and upon the credit side all payments, dividends, and expenses.

If all the bankrupt's estate is got in, the debit side of the assignee's account will coincide with the inventory delivered by the bankrupt in value, but not item by item, as the items will have been converted into cash. But if it is not all got in, the assignees must explain, or account for the difference. Herein is a marked distinction which, in legal accounts, has not

been sufficiently adverted to. A person intrusted with the administration of an estate, like an assignee or executor, is put in possession of all the estate, and consequently he is *accountable* for it all; but he is not *answerable* for it all. It may be impossible for him to recover some portions, such as bad debts. If called upon, he must give satisfactory reasons why such portions have not been got in. He has been put in possession of the whole, and he must give some satisfactory account of it; but, though he is thus accountable for all, he will only be answerable or chargeable with what he *actually* recovered, or with what, *but for his own wilful default*, he might have recovered. This point we shall have further occasion to discuss, under the head of Executor's Accounts, which follow.

The most important and the most complex of all the fiduciary accounts, and those in which, some time or other, almost every person becomes interested, are the accounts of executors and administrators. As executors and administrators are accounting parties before three different tribunals or authorities, we shall more particularly address ourselves to them, as the rules applicable to them are, in almost all instances, more or less applicable to trustees and other fiduciary accountants.

An executor derives his authority from the will of the testator; but an administrator is an officer of the ordinary, appointed under the statute 31 Edward III., c. 11, for the due administration of an estate, when the owner has died intestate.

The duties of an administrator are thus concisely laid down by Blackstone in his Commentaries:—

1. He must bury the deceased in a manner suitable to the estate which he leaves behind him.

2. He must prove the will, or an administrator must take out letters of administration.

3. The executor or administrator is to make an inventory of all the goods and chattels, whether in possession or action of the deceased, which he is to deliver in to the ordinary upon oath, if thereunto lawfully required.

4. He is to collect the goods and chattels so inventoried.

5. He is to pay the debts of the deceased.

6. He is then to pay the legacies, so far as the assets will extend.

7. When all the debts and particular legacies are discharged, the surplus, or residuum, must be paid to the residuary legatees; and if there be no residuary legatee appointed, it is by a recent statute,* to be distributed among the next of kin, according to the statute of Distributions.

An executor, as it has been observed, derives his authority from the will of the testator; but an administrator is an officer of the ordinary, appointed under the 31st Edw. III., c. 11, which provides that, in case of intestacy, the ordinary shall depute the nearest and most lawful friends of the deceased to administer his goods; which administrators are put upon the same footing, with regard to suits and to accounting, as executors appointed by the will.† "The statute 21, Henry VIII., c. 5, enlarges a little more the power of the ecclesiastical judge, and permits him to grant ad-

* 11 Geo. IV., and 1 Will. IV., c. 40.

† 2 Blackstone's Com. 495.

ministration either to the widow or the next of kin, or to both of them, at his own discretion; and, where two or more persons are in the same degree of kindred, gives the ordinary his election to accept whichever he pleases."* By the same statute it is also provided, thatthe executors or administrators shall, in the presence of two at least of the creditors of the deceased, or, in default, of two other honest persons, make a true and perfect inventory of all the goods, chattels, wares, merchandises, as well moveable or not moveable, whatsoever, and deliver the counterpart of the said inventory upon oath to the ordinary.

The statute of Distributions, 22 and 23 Chas. II., c. 10, empowers the ordinaries granting administration to take a bond of each administrator to adminster the estate well and truly, and to render a true and just account of his administration, and to pay the residue, according to the decree of the Ecclesiastical Court.

Moreover, by the 38th section of the Stamp Act, it is directed that no probates or letters of administration shall be granted, without an affidavit that the effects of the deceased— exclusively of any trust, but including *leasehold estates for years,* whether absolute or determinable on lives, if any, and *without deducting any thing on account of debts due* from the deceased—are under the value of a certain sum, to the best of their knowledge and belief, upon which sum the probate duty is to be paid. Under the acts 36 Geo. III., c. 52, and 45 Geo. III., c. 28, the executors must render a residuary account to the Legacy Duty Office.

Under these regulations, executors and administra-

* 2 Blackstone s Com. 495.

tors are rendered accounting parties: first, to the officers of the crown, in respect of the probate and legacy duties; secondly, in the ecclesiastical courts, to the ordinary, at the instance of any of the parties interested in the effects of the deceased; and, thirdly, they are further accountable in the courts of equity as trustees.

Now, these three accounts, or inventories, which they may be called upon to deliver, may be all *different from one another;* and they are all different from what would be the balance-sheet of the testator. The testator's balance-sheet would exhibit the whole property of the testator, *real* as well as personal, with an estimate of the value. The Court of Chancery, with its extensive powers, will force an executor to give a full account of all the real* and personal estate of the testator, which the executor knows of, throughout the whole world, of leaseholds for lives, mortgages, and of all the profits of business made by the executor's employing or continuing the testator's money in trade, and of all rents and profits accrued and received by the executors since the testator's death. The Stamp Office primarily requires merely a gross valuation of the estate for probate; but for the residuary account it requires an accurate inventory of the personal estate and subsequent rents, profits, and accumulations received by the executors since the death; and, also, all realty directed to be sold or mortgaged, as well as leaseholds for years determinable upon lives.

* In the ordinary course of business, an executor has nothing to do with the realty, unless he is directed by the will, which frequently occurs. To take the most extensive case, we have here, and in the following pages and schedules, inserted the realty, as if devised to the executor to be sold.

But an Ecclesiastical Court can only require an inventory of the personal estate of the testator within the jurisdiction of that ecclesiastical court. Thus, in the province of Canterbury, an inventory of effects in the province of York* or in Ireland cannot be required; nor can an ecclesiastical court call for subsequent profits of a business, nor any realty or mortgages of leaseholds for lives.

Where a party is so beset with difficulties in the form of accounts, as is an executor, it becomes him to be very careful as to his proceedings. His first step must be to take a list, or general and comprehensive Inventory, of the estate he is about to administer. As soon as he has collected or ascertained it, he should get the crops, cattle, plate, furniture, and such items as require a valuation, appraised by a professed appraiser, who will give him an inventory and appraisement of them in due form. By so doing, he will be prepared to swear the value of the estate under a certain sum, which, when he applies for probate, he will be required to do to the best of his knowledge and belief; and he will also be prepared with an inventory for the ecclesiastical court, if called on to produce it. This general inventory, also, will be of the greatest assistance to him in getting in the assets and administering the estate.

When the inventory is prepared as recommended, it may be advisable to render it to the ecclesiastical court, though not especially called on so to do, if there is any probability of dispute. "It is the part," says Toller, "of every prudent person who sustains the

* This is one of the great advantages of the courts of equity over the ecclesiastical courts, in the administration of an estate.

office of an executor, in every case to see that the effects are carefully appraised and reduced into an inventory, not only because he may be cited hereafter to produce it, but because a distinct and accurate knowledge of the fund is necessary to direct him in the safe execution of his trust. Indeed, if a party administers without making an inventory, the law will suppose him to have assets for the payment of all the debts and legacies, unless he repel the presumption; whereas, if he make an inventory, he shall not be presumed to have more effects of the deceased than are comprised within it; and the proof of any omission is then thrown on the opposite party."*

In point of law, it is the duty of the executor and administrator, of their own accord, to exhibit an inventory.† It is, however, rarely done in practice; and it seems that if he has originally made a formal inventory and appraisement, that may be produced in the ecclesiastical court if required, and will be sufficient to rebut the presumption of his having assets equal to all demands.

If the testator has been a careful man, who kept his accounts accurately, whether in trade, as a private gentleman, or otherwise, an executor will have little difficulty in bringing down his accounts to the day of his death; whereby he will be at once able to ascertain the amount both of his real and personal estate, and of all his debts and credits; in which case it will become the executor to perform the same duty as a merchant taking Stock; viz., to ascertain whether the goods he actually finds are such as he ought to find.

* Toll. 250. † Abp. Canterbury *v.* Wells, Salk. 251.

This is the more important, as he is chargeable out of his own pocket for any wilful neglect on his part. If, however, the testator has not been a careful man in his accounts, the executor must do the best he can to make up his accounts, and find up his effects, and the default (if there be any omission) rests not with him, but with the deceased.

In Appendix XVI. is set forth the Residuary account required by the Legacy Duty Office. The ecclesiastical court is unable to enforce so full an inventory, and is often more minute in the inventory it requires. Plate, oxen, horses, &c. are often enumerated; but as the court reserves to itself what kind of inventory it will receive, an executor would do right to present to it the inventory he made and got appraised. It is, however, now rare that an inventory is either carried in or called for by the ecclesiastical courts. It seems that in this inventory, the Sperate must be distinguished from the Desperate debts.*

The schedules required by the court of Chancery of an executor or trustee, will be found in Appendix XVII.

There is still another authority before which an executor in the city of London may be called to account. By the custom of the city, the mayor and aldermen, at the instance of a minor unmarried orphan of a man or woman free of the city, may compel an executor or administrator to appear at a court of orphanage and exhibit an inventory, and, in case of debts outstanding, to give security to the chamberlain to render, upon oath, an account of the same when

* Toller, 248.

received; and on his refusal, commit him till compliance.*

When an executor has made up his general inventory, he will observe that this inventory contains the estate he is to get in and administer. He will therefore do well to put this inventory in the form of a Dr and Cr account. The effects in the inventory will appear upon the debit side, and as he gets them in, or disposes of them, they will go off upon the credit side. Thus, if he transfers to a legatee so much stock in the consols specifically bequeathed, it will go off upon the credit side of this inventory account. So also if he delivers so many horses or hounds. So also, when he possesses himself of the cash in the house, or in the bank, or sell so much stock, it will pass off on the credit side of this inventory account to the debit side of executors' 'Cash account with the estate' to be there accounted for by them. Thus the inventory account will be discharged of all items got in, and the desperate debts or items will alone be left, and the amount of these will balance the account. This inventory account may be broken up into several subsidiary accounts, if necessary. Thus, if the testator has stock in several different funds, the executor would do right to carry these stocks to several distinct accounts, subsidiary to the general inventory.

As he gets in the estate, unless the exigencies of his office require him to keep the balance in his hands for particular purposes, he must invest the proceeds in the 3 per cent. consols, which is the fund of the court of Chancery. It is likewise his duty to dispose of the

* Toller, 254.

funded property of his testator, and invest the proceeds in the same fund,* unless by the will the funds are specifically bequeathed in the form in which they stand, or are for any purpose directed to be retained in that form, or can be passed as they stand to the residuary legatee.

As soon as an executor begins to collect the assets, and has made his general inventory, it is necessary for him to open an account, which he will entitle "The Executors of A B the testator in account with his estate." If the estate is large, he should continue the testator's account at his bankers, and pass every sum through that account, so that the pass-book of the banker may in all respects tally with his own account-book. Every debt that he gets in, the proceeds of every sale that he receives, he should pass through this banker's account; and every legacy he pays, or investment he makes, should be made through the instrumentality of the banker. An executor, also, should be particularly careful not to mix the testator's money with his own in the bank; for, in the one case, if the bank should fail, he would not be answerable for the loss, but if the money should be mixed with his own when such an accident occurred, he would be bound to replace the whole; and, moreover, if he happen to have a large balance of the trust money in his account, and should overdraw his own money in the bank, instead of simply overdrawing his banker, he would be drawing upon the trust money, which would subject him to interest at 5 per cent. upon all balances

* 7 Ves. 151; 16 Ves. 141.

in his hands at the time, or give a claimant an option to share the profits of his business.

An executor's cash account current is in general his account with the estate. All he receives comes in the usual form upon the debit side, and all he pays goes off upon the credit side. He must also open an account with each of the legatees to whom he pays the legacies, if payments are made by instalments, or any payments of interest, dividends, annuities, or for maintenance or education from time to time, are to be made. To the credit of each of these accounts he would put the respective legacies due to them, and debit each with the sums he pays, and be attentive to take vouchers for every individual sum he pays, especially if it amount to 40*s*. If any legacies are for life, with a limitation over, he should open the account with the legatee for life, and continue it with the person entitled after his decease, and head the account accordingly. He must also open an account for the residuary legatee, to whom, in fact, he is more particularly accountable. It may be here observed, that the law allows an executor or administrator a year to collect the assets and pay the debts; and the legacies are not payable till the expiration of the year. If they are directed to be paid immediately, the effect is, only that they carry interest from the time of the testator's death.

An executor's accounts, at first sight, appear to be incapable of being brought to a balance in a satisfactory manner. But this is not the fact; for they may be constructed upon the system of double entry, perhaps more advantageously than upon any other;

viz., in the form of an Italian ledger, as we have shown the system of single entry to be.* We state this method below, to give executors a clear system upon which, in any complex case, they may keep their accounts with the advantage of having all the schedules they can require gradually formed to their hands as they proceed in the administration of their trust, and all of them collected in one book, instead of being scattered over different scraps of paper. The further advantage also results of being enabled, by a balance, to detect any errors; and though it may appear a little formal, I believe it will be found to contain, upon the whole, a considerably less number of figures and writing than any other account that could be kept.

The scientific method, then, of constructing an executor's account in ledger-form, would be to open an Inventory or Stock account, containing on its *credit side* a schedule of all the effects of the testator, with every claim, good or bad, divided into the exact heads that the official Residuary account of the Stamp Office is divided into, and to distribute all these through the ledger to different accounts. Thus, one account would be *debited* with all the items of the furniture, plate, linen, china, books, &c.; and another with wine, liquors, &c.: these chattel accounts would comprise the appraiser's inventory. Another account would be *debited* with the consols; another with the bank-stock, &c.; another might contain all the debts due to the testator, good, bad, or indifferent; another, the leaseholds, &c.; and the Cash account would be debited with the cash found in the house and at the bankers. This Cash account would

* See page 52.

become the cash account current of the executors with the estate. When all the assets were thus distributed through the ledger, the accounts so opened would balance the credit side of the Stock or Inventory; the *debit* side of the Inventory, or Stock account, would contain the debts due from the testator, which might be *credited* to a Debt account; the ledger would then at the begining balance, as to all the *items,* but the money would not yet be inserted. As the executors received cash, by the disposal of property, receipt of debts, or sale of funds, they would debit their cash account, and credit the account whence they received it, with its equivalent. If they received dividends upon funded property, or interest upon mortgages, they would open a profit and loss, or a dividend account, which would be credited with such dividends, while the cash was debited with them; and all these dividends would follow into the Profit and loss or Dividend account. As they paid probate duty, funeral expenses, debts, and the like, they would credit the Cash, and might open an account for each of these items, which would be accordingly debited. As they paid the legacies, either in cash or by transfer of specific funds or items, the cash, Funded account, or Furniture account, would be credited, and a Legacy account debited, and so on, till they had administered the estate. They would then balance the accounts, which they might do simply by carrying to the *credit* of the cash column of the Inventory account, the sums actually received for each item, and all the additional dividends, &c. from the dividend or profit and loss account, and carrying to the *debit* of the Inventory account the balance of cash in hand, the funeral, and testamentary, and other expenses collected from

those accounts, and the legacies paid (the debts, if all paid, are already there). This inventory account should then, of course, balance and exhibit accurately the administration of the estate. If it do not balance, the difference will show what assets the executor had not got in or lost. Now, all the different ledger accounts that we have opened are simply the different inventories, &c., which an executor must make and carry in to explain the items he has put together; but by opening them thus, as accounts, and making double entries in the usual form, all the separate inventories and schedules become gradually formed without the slightest difficulty.

As an executor in starting deals only in estimates, he need not insert the value of the items; but as many of the items of the real accounts may not be disposed of when his time to account comes, he should use a double-columned ledger: one column to contain the sums actually received, and the other to contain the value of the items still outstanding, as required by the Legacy Duty Office. By this means, his inventory or stock account would gradually grow up into the exact form required by the Stamp Office and residuary legatee, while the rest of the book would contain precisely the schedules which he must produce in support of his account.

When an executor comes to the close of his labours, he frequently ascertains that the estate has not realised the sum upon which he paid the probate duty. If this be the case, he can recover the difference, for it is provided by the 40th section of the stamp act—"That where the estimate shall be too high, if the probate or administration be produced to the Stamp Office within

six months after the true value shall have been ascertained, with a particular inventory, and account and valuation on oath, the commissioners may expunge the stamp and substitute another, and make an allowance for the difference, as in cases of spoiled stamps; or, if the difference be considerable, repay the same in money, at their discretion." An executor is also bound to apply to rectify the stamp if his estimate has been too low, and he must pay the difference.

Upon the conclusion and final winding up of any transactions, wherein one party is an accounting party, it is always a matter of prudence for him to obtain a release, which should be under seal. All trustees, executors, agents, stewards, &c., should do so.

CHAPTER VIII.

ACCOUNTS IN THE COURT OF CHANCERY.

The great tribunal which has the cognizance of accounts is the Court of Chancery; nor can the investigation of accounts be well entrusted to any court founded upon principles different from those of that court. All proof in matters of account must commonly be confined to the knowledge of the accounting party. And no court without the extensive and inquisitorial powers of a court, which can interrogate upon oath both defendant and the plaintiff, can be in any manner adequate to deal with such a subject. The Courts of Bankruptcy and Insolvency may be regarded as branches of the Court of Chancery, and have power to examine the parties upon oath.

There was formerly an action of account in the courts of common law, and the accounts were referred to the auditors; but it has been long disused. The ecclesiastical courts also are so limited in their powers and jurisdiction, that complex accounts rarely come before them.

It is not, however, every case of apparent account in which the Court of Chancery will entertain a suit.

The simple circumstance of one person being indebted to another is not sufficient. In all such trans-

actions as rent, tolls,* trade, and the like, when dealings are in the simple and ordinary course of all Dr upon one side, and all Cr upon the other side, Equity will not entertain a suit for an account; as these are the proper subjects of an action at law, when the creditor must prove his claim. The court will, however, sometimes, upon a sufficient case, assist, by putting the plaintiff in an action upon his oath. If a summary process and accountant-masters were introduced, as suggested in a former chapter, it is worthy of consideration whether these matters might not be altogether removed into equity, and the masters be invested with the power of examining, *vivâ voce*, both plaintiff and defendant upon oath. Again, an item, which is simply matter of *set-off*, is not sufficient to induce the interference of the court; for the courts of common law take cognizance of set-off under a statute.†

In all matters of illegal contract, such as smuggling and illegal under-writing, equity will not assist a plaintiff who comes into court without clean hands. Matters of revenue are the subjects of the Court of Exchequer,‡ and the Court of Chancery will not interfere without the consent of the crown.

To induce the interference of the court, there must be either

1. Mutual demands and complicated accounts.§
2. Some fiduciary subject where the position of the accounting party is such, that any default in his accounts becomes a breach of trust.

* The court will entertain a suit for tolls in the form of a bill of peace.

† 2 Geo. II., c. 24, § 13, made perpetual by 8 Geo. II., c. 24, § 4 & 5.

‡ Reeve *v.* Attorney-General, 2 Atk. 223. Coomb *v.* Trist, Mar. 26, 1835. Mad. 28.

§ Dinwiddie *v.* Bailey, 6 Ves. 136.

3. The court will also direct an account, as a collateral incident, where its powers have been put in requisition for some other purpose.
4. In some other cases, also, which stand upon their own peculiar circumstances, the court will grant an account.

I. By far the greater portion of accounts, in which mutual demands obtain, are partnership accounts; and the inefficiency of the Court of Chancery to deal out justice between the parties, has been already pointed out. In other cases of mutual demand and cross claim and complicated accounts, the court will give relief: but in these, as well as in other instances, the strict system of the court in demanding vouchers for every item, and giving too little discretion to the masters in chancery, is severely felt.

In the remaining branches the court is much more successful.

II. Under the second head, the court entertains suits against all trustees, executors, administrators, and against mortgagees, who, by taking possession of the estate, have put themselves into the position of accounting parties. Solicitors, also, entrusted by their clients with money, and all agents, factors, stewards, and servants entrusted with monies, are bound *ex officio* to keep their accounts correctly; and it is laid down that a factor or agent shall not be allowed his salary where he acts contrary to the interests of his principal, or where he has not kept his accounts,* nor can he impute neglect to his employers.† Receivers and committees

* White *v.* Lady Lincoln, 8 Ves. 369.

† 5 Ves. 492; 7 Ves. 599. Pease *v.* Green, 1 J. & W. 135. Jenkins *v.* Gould, 3 Russ. 385.

are of the same class; but, as mere officers, they are under the immediate superintendence of the court or chancellor.

III. In all cases where a bill may be filed to put the powers of the court into requisition for any other purpose upon equitable grounds, an account may be prayed as a collateral incident; as, where an injunction is granted to restrain the felling of timber,* or the piracy of a copyright,† an account will be granted, and, it seems, in all instances of waste, when an injunction is obtained.

IV. The court will also entertain suits for account in matters of tithe and dower.

An account in equity is obtained by filing a bill against the accounting party, which sets forth all the material circumstances of the case in which the plaintiff claims an account. It then interrogates the defendant upon his oath as to the truth of the facts stated, and prays an account, and such other remedies as the circumstances require.

The defence which may be set up to this bill will depend upon circumstances. If, upon the case stated by the bill itself, it appears that the plaintiff is not entitled to the relief, the defendant will demur to the bill. If the defendant can set up any extrinsic facts by which he can show that the plaintiff is not entitled, he may take advantage of it by a plea. But if he can manage neither, he must, upon his oath, put in a full answer to the bill.

* Jesus College *v.* Bloome, 2 Atk. 262. Lord Hardwicke, however, put this upon the ground of preventing a multiplicity of suits.

† Baily *v.* Taylor, 1 R. & M. 73, and cases cited 6 Ves. 701 n.; 9 Ves. 346.

The matters which a defendant may set up as barring an account altogether or partially, are—

1. A want of title in the plaintiff.
2. A release under seal.
3. A release not under seal.
4. A receipt in full.
5. A stated account.
6. Acquiescence and laches.
7. Length of time, and
8. The statute of limitations.

I. If the plaintiff's interest in the subject matter and right to call for an account are denied, or not apparent, an account will not be granted. But, in some instances, the court will retain the bill, with liberty to the parties to bring an action or ejectment, or will direct an issue to try the right of the party claiming, and upon the return of the verdict the court will proceed.

II. At the conclusion of the last chapter it has been observed, that upon the winding up of any transaction, wherein one party is accountant, it is right for him to obtain a release under seal, and this is particularly necessary for executors and trustees.

A *release under seal* may be pleaded, and is a bar to a bill for an account.* It may also be insisted upon in the answer,† even though it be not signed.‡ It must be founded upon some consideration ;§ but the adjustment of the accounts is a sufficient consideration. If obtained by fraud, or the accounts are unfair, or there be con-

* Redesdale, 258, 260.

† Sumner *v.* Thorpe, 2 Atk. 1; Burke *v.* Browne, 2 Atk. 399.

‡ Taunton *v.* Pepper, 6 Mad. 166.

§ 2 S. & L. 728.

cealment, the release is void and the accounts will be opened.*

III. A *release not under seal* must be pleaded or insisted on as a stated account.†

IV. A *receipt in full, Semble,* sufficient in ordinary circumstances, *Secus,* in suspicious circumstances.‡

V. A *stated account.* There are, however, many accounts that do not require so formal an instrument as a release under seal; and many where the transactions are continued, and settlements frequently take place. In all partnership transactions, when a Rest is made and a balance struck, the accounts in the Rest-book ought to be signed by all the parties, by which the accounts are settled up to that time. An account settled, whether it be signed or not, is called a *stated account.* A stated account may be set up as a defence to a bill; and it may be either pleaded or insisted upon in answer. But the defendant in setting up a stated account as a defence, must swear that the stated account is just and true to the best of his knowledge and belief;§ and if error or fraud is charged, it must be denied.

It is not necessary that a stated account should be signed;‖ but acquiescence in it must be shown. Under certain circumstances, however, acquiescence will be presumed.

VI. *Acquiescence—Laches.* The mere delivery of an account, without evidence of contemporaneous or subsequent conduct, does not afford a presumption

* Roche *v.* Morgell, D. P. 2 S. & L. 728.
† See Redesdale, 263; Anon. 3 Atk. 70.
‡ Middleditch *v.* Sharland, 5 Ves. 87.
§ Redesdale, 260.
‖ See Atty. Gen. *v.* Brooksbank, 2 Y. and J. 37.

of a settlement.* If a person receiving an account keeps it by him a considerable time without making any objection, that is sufficient evidence of his acquiescence.† It seems that a banker's pass-book delivered to his customer, in which there are entries on one side only, is not evidence of a settled account between the parties, although the customer keeps the book without making any objection to the entries contained in it:‡ *semble*, a banker's pass-book, in the ordinary course, is a settled account whenever it is made up, if not objected to. The delivering up of voucher is evidence of a settlement.§ With respect to foreign merchants, if one merchant sends an account current to another in a different country, on which a balance is made due to himself, and the other keeps it by him for two years without objection, the rule in equity and of merchants is, that it is considered a stated account.‖ And it is said that, among merchants, it is looked upon as an allowance of an account current, if the merchant who receives it does not object against it in a second or third post.¶

It may be further observed, that, in matters of real property, the new statute of Limitations "is not to interfere with any rule or jurisdiction of courts of equity, in refusing relief on the ground of acquiescence or otherwise to any person, whose right to bring a suit may not be barred by virtue of that act."**

VII. *Length of time* also operates as a bar; for

* Irvine *v.* Young, 1 S. & S. 333.

† Willis *v.* Jernegan, 2 Atk. 252; but see Clancarty *v.* Latouche, 1 Ball. & B. where the reverse is laid down.

‡ *Exp.* Randleson, 2 Dea. & Chit. 534. § Willis *v.* Jernegan, 2 Atk. 252.

‖ Denton *v.* Shellard, 2 Ves. sen. 239; Madd. 142.

¶ 2 Vern. 276; Madd. 142; *sed quære.* ** 3 & 4 Will. IV., c. 27, s. 27.

parties, by neglecting to bring forward their demands shall not involve others in difficulties.* There is always a disinclination in the courts to entertain stale demands. Where parties have laid by and suffered an estate to be distributed, they cannot insist on an account.† *Secus,* where the accounts are clear, and no parties are called upon to refund.‡

VIII. *Statute of Limitations.*—By the new statute of Limitations,§ as to real property, it is enacted—"That no person shall make an entry or distress, or bring any action or suit in equity to recover any land or rent, but within *twenty years* next after the time at which the *right to make such entry or distress, or to bring such action, shall have first accrued* to the claimant, or some person through whom he claims."‖ The act then defines, in a variety of instances, the times at which the right shall be deemed to have accrued, and what shall be a possession or equivalent thereto. And it further provides, that persons under the disability of infancy, lunacy, coverture, or beyond seas, and their representatives, shall be allowed *ten years* from the termination of their disability or death;¶ but that, in all events, no action, &c. shall be brought but within *forty years* after the right of action has accrued.** In cases of express *trust,* the right of the *cestui que trust* shall not be barred till *twenty years* after the land or rent shall have been conveyed to a purchaser for valuable consideration.†† That, in cases

* Hercy *v.* Dinwoody, 4 Bro. 268.

† Ib.; Smith *v.* Clay, 3 Bro. 639 n.; Deloraine *v.* Browne, 3 Bro. 633; Huet *v.* Fletcher, 1 Atk. 467.

‡ Chalmer *v.* Bradley, 1 Jac. & W. 62; Astrey's case, 2 Freem. 55.

§ 3 & 4 Will. IV., c. 27.

‖ Sec. 2. ¶ Sec. 16. ** Sec. 17, 18. †† Sec. 25.

of *fraud*, the right shall not be barred till *twenty years* after the fraud shall, or with reasonable diligence might, have been first known or discovered.* That a mortgage shall be barred at the end of *twenty years* from the time when the mortgagee took possession,† or from the last written acknowledgement. That no lands or rents shall be recovered by ecclesiastical or eleemosynary corporations sole, but within *two incumbencies and six years*, or *sixty years*.‡ No advowson shall be recovered but within *three incumbencies*, or *sixty years*.§ That, in all events, no advowson shall be recovered after *one hundred years*.‖ That all money charged upon land and legacies shall be deemed satisfied at the end of *twenty years*, if there be no interest paid, or acknowledgment in writing, in the mean time.¶ That no arrears of dower shall be recovered for more than *six years*.** That no arrears of rent, or arrears of interest, in respect of money charged upon or payable out of land or rent, or in respect of any legacy, or damages in respect thereof, shall be recovered but within *six years* next after the same shall have become due, or from the last written acknowledgment.††

The new statute of Limitations, of which the preceding sketch exhibits the contents, relates only to *real property* and legacies. For *personalty*, the old statute of the 21st James I., c. 16, is still in force, and the principal enactment bearing upon the subject of this treatise is—"That all actions of account, or upon the case, *other than such accounts as concern the trade of merchandise between merchant and merchant, their*

* Sec. 26. † Sec. 28. ‡ Sec. 29. § Sec. 30. ‖ Sec. 33.
¶ Sec. 40. ** Sec. 41. †† Sec. 42.

factors or servants, and all actions of debt grounded upon any lending or contract, without specialty, and all actions of debt for arrearages of rent, which shall be sued or brought at any time, shall be commenced and *sued* within *six* years next after the cause of such action or suit, and not after."*

It is also provided—"That any person or persons, infant, feme-covert, non compos mentis, imprisoned, or beyond the seas, shall be at liberty to bring the same actions within *six years* after their coming to or being of full age, discovert, of sane memory, at large, and returned from beyond the seas."†

By the 4th Anne, c. 16, the same provisions are extended to the recovery of seamens' wages, and to debtors who are beyond the seas on their return.

These acts are further amended by the 9th Geo. IV., c. 14, called Lord Tenterden's Act. By this act it is provided, "That in actions of debt, and upon the case grounded upon any simple contract, no acknowledgment or promise, by words only, shall be deemed sufficient evidence of a new or continuing contract, to take any case out of the operation of the said enactments or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing, to be signed by the party chargeable thereby. That, where there are two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor, or administrator, shall lose the benefit of the above enactment, so as to be made chargeable in respect or reason only of any written acknowledgment or promise made and

* Sec. 3. † Sec. 7.

signed by any other or others of them; provided always, that nothing therein contained shall alter, or take away, or lessen the effect of any payment of any principal or interest made by any person whatsoever."

The continuance of a mutual account of debts and credits is held to be sufficient evidence of an acknowledgment to take a case out of the statute.

But it seems that, where the articles are all on one side, the last item which happens to be within six years shall not draw after it those that are of longer standing.*

When the time has began to run it shall continue to run, notwithstanding that the party claiming falls under any of the disabilities.

The statute of Limitations cannot be pleaded against a *trust*, nor where a man *deposits* money in the hands of another to be kept for his use, as in the case of a banker; for the possession of the person intrusted is the possession of the person entitled, and there is no adverse possession till some refusal or denial of the right, all which are very different from loans.

The statute of Limitations is no plea in bar to debts by decree, order, or award,† nor to an open account.‡

The exception in the statute of *such accounts as concern the trade of merchandise between merchant and merchant, their factors and servants,* is very important. It has been held, that this exception only extends to accounts current, and not to accounts stated;§

* Catling *v.* Scoulding, 6 T. R. 189.

† Mildred *v.* Robinson, 19 Ves. 587.

‡ Scudamore *v.* White, 1 Vern. 456; Madd. 138.

§ See cases in note 2 Saund. 127. But see Cranch *v.* Kirkman, N. P. Peake, 121; and also Sheerman *v.* Withers, Cha. Ca. 152; Farrington *v.* Lee, 1 Mod. 270.

but it seems clear that where all accounts have ceased between merchants for six years, the statute operates.*

The difference between merchants' accounts and others has been said to be, that, as to the former, a continuation of accounts will afterwards prevent the statute running against the previous accounts; but as to others, which are not merchants', the statute will be a bar as to all items before six years.†

If a defendant cannot bar the account altogether, by a demurrer or plea, he must put in an answer, in which he must, upon his oath, give a full answer to the bill, and to every material portion and interrogatory it contains. He must, moreover, if required, set forth schedules to his answer, containing his accounts, and a schedule of all the accounts, papers, letters, and documents relating to the matter, which are or ever have been in his possession; and must produce such as are in his hands, and leave them with his clerk in court, for the inspection of the plaintiff.

If the accounts set forth in the schedule are not satisfactory to the plaintiff, he may proceed further to a decree, in which directions will be given according to the necessities of the case.

The first account, however, that is required by the Court of Chancery, are the schedules.

The schedules to an answer in Chancery are not drawn by counsel, but are left to the solicitors to annex, and are often very unskilfully constructed. Nor is this altogether the fault of the solicitor; for the proper con-

* Barber *v.* Barber, 18 Ves. 286.

† Martin *v.* Heathcote, 2 Ed. 169 n.; Madd. 138.

struction of the schedules depends upon a matter which is but ill defined, if indeed it is thoroughly understood.

It has been laid down as a general rule, "that an executor or administrator shall not be charged with any other goods as assets than those which *have come to his hands.*"*

But this proposition is laid down rather too generally, for he is certainly answerable for all which, but for his own wilful default, might have come to his hands; and it is correctly stated by Wentworth, "That if the testator, at the time of his death, has a flock of sheep in Cumberland, bullocks in Wales, fat oxen in Bucks, money, household stuff, and plate in London, and his executor dwells in Coventry, viz., far from all these places, the executor has such an actual possession presently upon the testator's death, that he may maintain trespass against any stranger taking them away or spoiling them;" and, therefore, he considers it doubtful whether this shall not be such a possession in the executor, and such a coming of these goods to his hands, as to charge him with payment of debts and legacies, and make his own goods liable instead of them.

In the law, according to the preceding authorities, it seems not to be quite a settled question for what an executor is accountable; but as it is laid down that an executor is put by the law into possession of all the testator's effects, in the same manner as was the testator himself, with all the testator's power to recover

* Read's case, 5 Co. 32 b. 34 a.

the assets, it follows that an executor must *account* in some manner or other for them all. It is, however, clearly determined that he is not to be charged but for those items which he actually receives, or which, but for his own wilful default, he might have received. Between these propositions there is no real discrepancy; for, though he is *accountable* for every thing, he is not *answerable* for every thing.

This I take to be a correct view of the case, and a solution of the difficulty. Upon this view, it seems that the schedules required by the Court of Chancery ought to be constructed. If an executor is called upon to account in Chancery, he is required to exhibit—1st, a schedule of all the testator's effects, not only which have come to his hands, but which, to the best of his knowledge, belonged to the testator;—2dly, a schedule of all the assets he gets in;—and, 3dly, a schedule showing his application of the assets. Such assets as he is unable to get in he may be forced by the court to enter into further explanations why he has not got them in. Some of these claims may be desperate; some may be disputed or established against him; or some of the chattels may be stolen; all which, and many others, may be good reasons why he should not be charged with the loss. But if any items be not recovered by reason of his neglect or default, his excuse will not be accepted, and they will be carried to the debit of his account, and charged against him. In the first schedule an account is to be set forth of all the assets that he admits himself to be *accountable* for; and in the second, an account of all he admits himself to be then *answerable* for, as having received them.

If the interrogatories of the bill are properly drawn,

the defendant will be required to set forth—1st, 'a full, true, and particular account, or inventory and account, of all the [real and] personal estate and effects whatsoever, which the said [testator] was [seised or] possessed of, interested in, or entitled to at the time of his death, and all the particulars whereof the same consisted, and the quantities and qualities of all such particulars [and a correct rental of the said real estates, and the particular situation and yearly value thereof, and in whose tenure and occupation the same and every part thereof now are, and at what yearly rents, and the full annual value of such real estates in the whole.]'

These particulars are comprised in the *first schedule*, which is neither more nor less than the inventory of the testator. An executor is, by the law, put into possession of all the assets in as full a manner as the testator himself possessed them, and in the first schedule he must set forth an account of them.

If there is real estate, the schedule is usually divided into two parts: one part of it contains the realty, and may be drawn in columns, like a receiver's account, as in Appendix XIV., or each item with the particulars may be enumerated, one after another, like a balance sheet, as may be found most convenient. The other part is devoted to the personalty, and this, if there be many mortgages or leaseholds, may also be drawn either in columns or as a balance-sheet. There may be other parts, in which may be enumerated items subsequently arising, such as rents or profits of trade.

The *second schedule* required of the defendant must set forth a full, true, and particular account of the assets contained in the first schedule, which have been pos-

sessed or received by the defendant, or by his order, or for his use, and how and in what manner, and when and where, and by and to whom, and for how much, the same, and every, or any, and what parts or part, have or hath been sold and disposed of, and whether any and what part thereof, [and to what value and amount, is undisposed of, and what is become thereof.]'

This schedule comprises all the receipts of the defendant which he admits, and the cash into which they have been converted. It should correspond with the first schedule, and, like that, may be divided into different parts. If required it must also set forth what parts of the estate is still outstanding, and for these the defendant may give any excuses, if necessary; *e. g.* he may enumerate certain debts as supposed to be bad or doubtful, or actions depending. In this second schedule, the defendant in fact debits himself with the sums which he admits to have received, and it is for the plaintiff to compare the two schedules, and observe whether there are any other items with which he ought to be debited, or which he has sold inadequately, or otherwise wasted, or of which a further explanation is required: if so, he may amend his bill, or obtain it before the master.

The *third schedule* required by the bill is the application of the testator's property by the defendant. This is the defendant's discharge, and is to contain all the items of expenditure—such as for funeral and testamentary expenses, debts, and legacies.

The plaintiff examines this schedule, to see that there has been no misapplication of the money and waste of the assets, such as improper payments or losses.

If the schedules are unsatisfactory, the cause goes to a decree, and the account will be taken in the master's office.

The balance of the money in the hands of the defendant should be particularly required by the bill, that it may be stated in the third schedule, for upon an admission of what the balance is, the court may be moved to have the money paid in; but otherwise this motion can only be made upon affidavits as to the balance appearing.

The *fourth schedule* contains a list of all the accounts, books, vouchers, letters, and documents whatsoever, relating to the matters in question, and upon a motion, these papers will be directed to be brought into court. The plaintiff will there examine them, and should there find the vouchers for every item in the schedules, which he can compare, and shape his course accordingly by the advice by counsel.

The accounting schedules should not contain every item of account, for that would be impertinent (unless the bill expressly requires such minute particulars),* but should be in effect a full balance sheet, giving all necessary explanation. Thus, funeral expenses would be a sufficient item to include all such expenses. The items will be found among the vouchers. Examples of the schedules will be found in Appendix XVII.

Upon the hearing of the cause a decree is pronounced, which, if an account is decreed, refers it to a Master of the court to take the account, and to make the parties all just allowances; and it directs the parties to produce before the master all the books and documents.

* Beaumont *v.* Beaumont, 5 Mad. 51.

There are several gradations in the form of a decree. An account may be granted simply, if none has ever been settled; or, if a settlement has been come to, which is set up as a stated account, it may be directed that such stated account do stand, with liberty to surcharge and falsify it; or the master may be directed to take the accounts generally, but if he find a stated account, to let it stand and not unravel it, with leave, however, to surcharge and falsify it. The court, in cases of fraud, opens the whole account.

The decree often goes further, and will grant an account with interest. Simple interest will be directed at 4*l.* per cent. or at 5*l.* per cent., according to circumstances. In cases of gross fraud, interest, with yearly or half-yearly rests, *i. e.* compound-interest will be decreed.

The costs of the suit and further directions are reserved till after the account is taken, and are often visited upon an accounting party, who has conducted himself improperly or fraudulently, as *between solicitor and client, i. e.* to the fullest extent the court allows. In other cases the court gives ordinary costs *as between party and party,* which is not so severe. The costs are frequently directed to be paid out of the estate in litigation, and in many cases each party will be compelled to pay his own costs. We simply state these gradations with respect to costs, as they are a very serious consideration, and are almost always visited upon an accounting party who transgresses the rules of equity, either by fraud, misapplication, or neglect; but we have no intention of going further into such an extensive subject.

The difference between a *stated* and an *open* account is most important. In an open account, the accounting

party is compelled to prove every item in the master's office; but where a stated account is admitted or established by the court, the tables are turned: the *onus probandi* is thrown upon the party seeking to impeach it. The stated account is directed to stand, but if the claimant party can prove any items in it to be erroneous, liberty is given him to *surcharge* it; *i. e.* to introduce upon the debit side any items which he can show the accounting party ought to be additionally charged with—and *falsify* it, *i. e.* to strike out from the credit side any items for which the defendant has improperly taken credit.*

Generally, wherever the plaintiff can specify any particular errors, liberty will be given to surcharge and falsify,† but otherwise a stated account will be established. But in cases of solicitors, trustees, and guardians, accounting with their clients, *cestui que trusts*, and wards, liberty will be given without proving specific errors.‡ So, where an agent has not kept regular accounts, but an account has been made up from loose papers.§ When liberty is given to parties to surcharge and falsify, they are not confined to errors of fact, but may take advantage of errors in law.‖ And where one party is allowed this liberty, the other may avail himself also of it, to correct mistakes.

An account is set aside for fraud.¶ Where there is no positive proof of fraud, suspicious circumstances

* See Pitt *v.* Cholmondeley, 2 Ves. sen. 566. In this case there is some confusion in the terms used, but the reasoning is clear enough.

† 14 Ves. 579. Twogood *v.* Swanston. 6 Ves. 486; 2 Free. 62; 5 Ves. 837; 1 Atk. 1.

‡ Matthews *v.* Walwyn, 4 Ves. 125; 2 Ves. 565. 2 Bro. 62. Langtoffe *v.* Fenwicke, 10 Ves. 405.

§ Lord Hardwicke *v.* Vernon, 4 Ves. 411. Beaumont *v.* Boultbee, 5 Ves. 585.

‖ Roberts *v.* Kuffin, 2 Atk. 112; Barn. 259.

¶ Vernon *v.* Vawdry, 2 Atk. 119; Barn. 480.

are not sufficient; but, in such case, liberty to surcharge and falsify will be given.* The opening of an account by the court is a fearful matter, where a man has been careless of his vouchers. The above observations will show how important it is for an accounting party to take and preserve vouchers, and frequently to come to a settlement.

In the master's office there are two considerations—the manner and the matter, the practice and the substance.

By the 61st of the new orders, it is directed, "That all parties, accounting before the master, shall bring in the accounts in the form of D^r and C^r, and any of the other parties who shall not be satisfied with the accounts so brought in, shall be at liberty to examine the accounting party upon interrogatories, as the master shall direct." But this is not always adhered to.

The account brought in is sworn to by the accounting party, and attached to the affidavit; or rather the account is brought in in the form of schedules to the affidavit.

The plaintiff or other claimant parties then bring in what is called a *charge; i. e.* a transcript of the debit or receipt side brought in by the accounting party, with the addition of such other items as they seek to charge him with; which additional items they collect either from the first schedule which he has annexed to his answer, or from such other information as they can acquire.

If the charge accords with the account brought in, it is allowed at once; but if not, the surcharged items must be proved, for which purpose the defendant may be examined.

* Townsend *v.* Lowfield, 3 Atk. 536.

If the affidavit contains accounts of both real and personal property, a charge is brought in for each.

The parties meet before the master, who allows or disallows the items sought to be surcharged.

When the charge has been allowed, the accounting party carries in his discharge, which is simply the credit side of the account which he has brought in. The parties meet again before the master, and every item of the discharge is gone through with, and vouchers must be produced for all items above 40*s*. The sums under 40*s*. are admitted upon the affidavit of the accounting party, provided he swears to the *fact* (and not the mere *belief*) of the payment, and the particulars of when, to whom, and for what paid.* The master marks the items and the vouchers as they are produced. The opposing solicitors who are present can take objections to any of the items; and the accounting party must not only prove the fact of the payment, but show the *propriety* of it.

A receiver's or committee's account is passed and vouched in a similar manner.

When the master has passed the accounts, he makes his report, and annexes to it as schedules, the charge and discharge as allowed. He strikes the balance of these, and states it in the body of his report.

We now proceed to the accounts themselves. As an executor's account is the most common and important, we shall treat more particularly of an executor's account; observing, that other fiduciary accounts are generally governed by the same rules of law and equity; but as they are generally less complicated, the rules

* 2 Atk. 410, Anon, 1 Vern. 282.

are not in such accounts called so extensively into operation. The accounts, for instance, of a trustee, or assignee, for the payment of debts, or for any other like purpose, and of a receiver, steward, or committee, are under very similar regulations.

Trustees, however, are visited much more severely by the court than are executors and administrators; indeed, so great is the burden imposed upon trustees, that unless some relaxation is introduced, the system will destroy itself, by persons generally declining to act.* With respect, however, to executors and administrators, the court has laid down the two following rules:

1. That in order not to deter persons from undertaking these offices, the court is extremely liberal in making every possible allowance, and cautious not to hold executors and administrators liable upon slight grounds.

2. That care must, nevertheless, be taken to guard against an abuse of their trust.†

It has been before observed, that an executor is *accountable* for all the testator's estate, into the possession of which he is put by the law; but that he is not *answerable* for it all. He is *accountable* for the inventory, or first schedule, which he brings in, but he is not *answerable* for any thing except what he actually gets in, or, but for his own wilful default, might have got in. The same rule is generally applicable to trustees, assignees, receivers, and all other fiduciary accountants.

* It has been suggested to appoint, with salaries, official trustees, like the official assignees, in bankruptcy, to whom the pecuniary part of each trust should be committed. It is a suggestion well worthy of consideration.

† Powell v. Evans, 5 Ves. 843. Raphael v. Boehm, 13 Ves. 410. Tebbs v. Carpenter, 1 Mad. 298.

Before we run over the principal items for which an executor is accountable, we may observe—That one executor in trust is not answerable for the receipts of the other, merely by taking probate, permitting the other to possess the assets, and joining in any act necessary to enable him to administer. *Secus* if he goes further, and concurs in the application.* The same rule is not extended generally in favour of trustees.

The items for which an executor [and generally a trustee] is *accountable,* may be comprehended, under the following.

I. He will be accountable for all that actually belonged to the testator.

II. He will be accountable also for some things *which never were in the hands* of the testator himself—as

1. *By Contract.*†

As where an executor renews a lease.

So where the testator himself had contracted for a new lease, or for goods.

2. *In remainder.*‡

As a lease to A for life, with remainder to his executor.

So a lease to A for life, and afterwards to the testator, who dies before A.

So a remainder in a term of years, which, though it never vested, and still continues a remainder, is of present value.§

3. *By Increase.*

As if sheep or cattle of the testator bear lambs, &c.

So profits of a lease beyond the rent paid to the lessor.‖

* Hovey *v.* Blakeman, 4 Ves. 595.

† See Wentworth's Office of an Executor; Williams's Law of Executors and Administrators, p. 1176, and the cases there cited.

‡ Wentworth—Williams. § Ib. ‖ Ib.

4. *Rents and Profits.*

As rents and profits of freehold directed to be sold, and of chattels real, accrued since the testator's death.

So profits realized by an executor's employing the testator's goods in trade.* And this whether the trade is carried on on the executor's own responsibility, or in pursuance of the partnership articles, or by directions of the will, or under the direction of the court;† or accruing upon the testator's capital detained by his partners in trade.‡

So profits of a share in a newspaper.

So the proceeds of a medical secret.

So the earnings of the testator's apprentices in the dockyards at Woolwich.§

So goodwill, if commercial, and without partners. *Secus*, if professional.‖

5. *By Condition.*

As where a lease for years, cattle, plate, or other chattels, were granted by the testator, upon condition that if the grantee did not pay such a sum of money, or do certain acts, &c., and this condition is broken, or not performed, and after the testator's death the chattel be brought back to the executor, it will be assets.¶

So chattels, real or personal, pledged by the testator, and redeemed by the executor, will be assets, for so much as they are worth beyond the sum paid for their redemption.**

So if an executor redeem with his own money, the surplus is assets.†† *Secus*, if he pay the full value.

6. *In Damages.*

As for damages and compensations awarded at law, or in equity, for injury to personal estate of the testator, or for breach of any covenant or contract made with him.‡‡

So for damages recovered against a stranger presenting to a

* Wentworth; Williams; Godolph. p. 2 & 24, sec. 4; Com. Dig. Assets, (C.)

† Ib. Palmer *v.* Mitchell, 2 M. & K. 672.; See Dakin *v.* Cope, 2 Russ. 175; Gibblet *v.* Read, 9 Mod. 459.

‡ Crawshay *v.* Collins, 2 Russ. 325.

§ Pitt *v.* Pitt, Ca. temp. Lee. 508. ‖ See p. 159.

¶ Wentworth—Williams. ** Ib. †† Ib.

‡‡ Co. Litt. 124 a. Com. Dig. Assets (C).

living vacant at the death of the testator ;* and this though the executor could not have sold, but might have presented his own son.

III. *Foreign Property* in any part of the world are assets in every part.†

As French stock.‡

So leasehold for years in Ireland. §

So real estate in any of the plantations belonging to any person indebted, was made assets for the satisfaction of his debts, in like manner as real estates in England were liable to specialty debts.‖

Where there is a question of the quality of an estate in lands situate in a foreign country, the court of Chancery will refer it to a master, to inquire whether the testator's interest in it was in its nature real or personal.¶

IV. *A grant of an Office* for years is assets.** Archbishops' options are assets.††

V. *Estates pur autre vie,* where there is no devise and no special occupant, were made assets in the hands of an executor by the statute of Frauds,‡‡ and the surplus thereof, after payment of debts, was distributable among the next of kin, by the statute of Geo. II. ;§§

* Wentworth—Godolph. Sale *v.* Bp. Litchfield. Ow. 99. Smallwood *v.* Bp. Litchfield, 1 Leon. 205. Rennel *v.* Bp. Lincoln, 7 B. & C. 195.

† Ib. Touchstone, 496; Atty. Gen. *v.* Dimond, 1 Cr. & J. 370; 1 Tyrw. 258; Dowdale's case, 6 Co. 47.

‡ Ib. *In re* Ewin, 1 Cr. & J. 157; 1 Tyrw. 107.

§ Ib. Bligh *v.* Lord Darnley, 2 P. W. 622.

‖ 5 Geo. II., c. 7; 9 Geo. IV. c. 33.

¶ Ib. Gardiner *v.* Fell, 1 Jac. & W. 24.

** See Wentworth's Office of an Executor—Williams's Ex. and Ad. Sir G. Reynell's case, 9 Co. 97, a—Schellinger *v.* Blakeby, 1 Ves. 347.

†† 1 Burn, E. L. 239, Potter *v.* Chapman, Amb. 98.

‡‡ 29 Chas. II., c. 3, s. 12. §§ 14 Geo. II., c. 20, s. 9.

And it passed by a will sufficient to pass personal estate.* The new statute of Wills† repeals so much of the preceding statutes as relates to estates *pur autre vie*, and enacts, that it shall be lawful for all persons to devise estates *pur autre vie*, whether there shall or shall not be any special occupant, and whether the same shall be freehold, customary freehold, tenant-right, customary, or copyhold, or of any other tenure, and whether the same shall be a corporeal or incorporeal hereditament.‡ And that if no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate *pur autre vié*, whether freehold or customary freehold, tenant-right, customary, or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof, by virtue of the grant; and if the same shall come to the executor or administrator by reason of a special occupancy, or by virtue of this act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.§

The act extends not to any estates *pur autre vie* of any person who died before the 1st January, 1838.

VI. Property assigned fraudulently is assets when the deed is set aside.

* Ripley *v.* Waterworth, 7 Ves. 425. † 1 Vict. c. 26.
‡ Sec. 3. § Sec. 6.

VII. Equitable assets which can only be obtained by the help of a court of equity, will be administered in equity upon the principle of equal distribution among all creditors, instead of satisfying creditors according to their legal privileges. Equitable assets are—

The equity of redemption.

The proceeds of a sale of real property.

For all the assets above an executor will be *accountable;* and they must be introduced into his first schedule. But he will not be *chargeable* for them all.

The items with which an executor[and generallyevery fiduciary accountant party]is*chargeable*are the following

I. He will be chargeable with all that he actually receives.

II. He will be chargeable with all losses arising from his want of due diligence in getting in the assets,

As, where a debtor, through the executor's delay, is enabled to plead the statute of limitations.*

So, where he suffers assets to remain on bond, or personal or foreign security, or in any other funds except the 3 per cents., whereby loss is suffered.†

So, where balances are left unproductive in a banker's hands who failed.‡

So, by not recovering a debt, or bringing an action when necessary.§

So, by neglecting for many years to convert a lease for lives which fell.‖

So, by neglecting to get in arrears of rent.¶

* Hayward *v.* Kinsey, 12 Mod. 573.

† Powell *v.* Evans, 5 Ves. 838; Eagleton *v.* Kingston, 8 Ves. 466; Buxton *v.* Buxton, 1 M. & C. 80.

‡ Moyle *v.* Moyle, 2 R. & M. 710.

§ Lowson *v.* Copeland, 2 Bro. 156.

‖ Phillips *v.* Phillips, 2 Freem. 12; Taylor *v.* Tabrum, 7 Sim. 28.

¶ Tebbs *v.* Carpenter, 1 Madd. 290.

So, if he release a debt or damages.*

Secus, if he compound for the benefit of the estate.†

So, where he extinguishes a debt by taking an obligation in his own name.‡

So, where he loses by submitting to arbitration.§

So, where, by a collusive sale at an undervalue, he obtains less for the goods than he might have had.‖

So, where he neglects an opportunity for sale of the next presentation,¶ and the living becomes void.

III. He will be chargeable for *losses* incurred by putting the assets out on insufficient security. An executor ought to invest the balances in the 3*l.* per cent consols, which is the fund of the court of Chancery, and he shall not then be answerable for any loss by the falling of those funds.

If he has invested in any other funds, he will be answerable for loss occasioned by the fall; but he will be answerable, not for the amount of the stock which might have been purchased, but for the principal money only.**

He will be liable for all losses if he has put the money out on personal security or bond.

If the will directs the money to be laid out on real or *personal* security, *Semble* he may use a sound discretion;†† but, even then, he cannot accommodate a trader with a loan on his bond.‡‡

* Cooke *v.* Jennor, Hob. 66; Brightman *v.* Keighley, Cro. El. 43.

† Blue *v.* Marshall, 3 P. W. 381; Pennington *v.* Healey, 1 Cr. and M. 402.

‡ Norden *v.* Levit, 2 Lev. 189; Hosier *v.* Arundell, 3 Bos. and Pul. 7; Partridge *v.* Court, 5 Pr. 419; Goring *v.* Goring, Yelv. 10.

§ Wentworth, Com. Dig. Adm. (I. 1.)

‖ Bac. Ab. Exor. (L) 1.

¶ Wentworth.

** Marsh *v.* Hunter, 6 Madd. 295.

†† Forbes *v.* Ross, 2 Cox, 116; 2 S. and L. 239.

‡‡ Langston *v.* Ollivant, Coop. 33.

May put the money out on real security which he has no reason to suspect.*

IV. He will be chargeable for all losses incurred by the failure of a banker or other agent.

Where he mixes the trust money with his own.†

Not if he pay it into a separate account of the trust.‡

Not if he transmit it to London, or to the country, according to the ordinary usage of business.§

It may be observed that losses of this kind only become a *charge* when they occur before the executor gets in the assets. With whatever he has got in, he is, of course, to be charged. Losses suffered afterwards become a question of *discharge*.

V. He will not be chargeable for an accident or injury occurring to the estate without his default or neglect.

As, if the testator's beast dies, or his ships perish in a tempest.

Nor for goods stolen.‖ *Secus*, if he had refused a good price.¶

Nor for accidental fire.**

Nor for perishable goods perishing,†† unless by his neglect, as if he had capriciously rejected a reasonable price for them.

VI. He will be chargeable where he makes any personal benefit by dealing with the assets, not only

* Brown *v.* Litton, 1 P. W. 141. But see Norbury *v.* Norbury, 4 Madd. 191.

† Wren *v.* Kirton, 11 Ves. 377. ‡ Ib.

§ Knight *v.* Lord Plymouth, 3 Atk. 480; 1 Dick. 120; Bacon *v.* Bacon, 5 Ves. 334.

‖ Wentworth; Com. Dig. Assets, D.

¶ 6 Mod. 181.

** Croft *v.* Lindsey, 2 Freem. 1.

†† Ib. Jones *v.* Lewis, 2 Ves. sen. 240.

for the amount; but the court gives the claimants the option either of receiving the benefits derived,* or of taking interest at 4 or 5 per cent., according to circumstances.

As where he purchases the trust estate, the purchase will be set aside, and he will be debited with all intermediate profits, and every advantage derived.†

So, where profits are derived from laying out assets on private security,‡ or by compounding debts,† or redeeming mortgages.†

VII. Where trustees or executors lend to each other they shall be answerable for all losses,

Even though the loan is on real security.§

So, also, if they have a power to lend on personal security, and lend to each other.‖

The court takes a distinction in the conduct of executors between *negligence* and *corruption.* In cases of negligence the executors are charged with interest at 4 per cent. only: but they are charged with 5 per cent. in cases of corruption.††

An executor shall not generally be charged with the assets till he recover them.

As for choses in action.‡‡

So, for damages awarded.§§

* Docker *v.* Somes, 2 M. & C. 655.

† Cooke *v.* Collingridge, Jac. 607; Hall *v.* Hallet, 1 Cox, 134; Watson *v.* Toone, 6 Mad. 153; *Exp.* James, 8 Ves. 346; Piety *v.* Stace, 4 Ves. 622; Fosbrooke *v.* Balguy, 1 M. & K. 226; Anon. 1 Salk. 155. See Burden *v.* Burden, 1 V. & B. 170.

‡ Adye *v.* Feuilleteau, 1 Cox, 24.

§ Stickney *v.* Sewell, 1 M. and Cr. 8.

‖ ——— *v.* Walker, 5 Russ. 7; Gleadon *v.* Atkin, 2 C. and J. 548; S. C. Tyrwh. 593.

†† Tebbs *v.* Carpenter, 1 Madd. 290, and the cases there canvassed.

‡‡ Com. Dig. Assets (D).

§§ Godolph. pt. 2, c. 24, § 5; Jenkins *v.* Plumbe, 1 Salk. 207; 6 Mod. 181; Williams *v.* Innes, 1 Camp. 364.

The account of an executor or trustee will not be discharged by any improper application of the assets. Improper application of the assets is called a *devastavit.* This is different from a *default,* though in the books they are very much confounded. If there has been a default, the rectification of it operates to introduce, from the inventory to the *charge* or debit side of the account, such items as the executor had omitted to charge himself with; but if there has been a devastavit, the rectification of that strikes off from the *discharge* or credit side of his account, those items which he had improperly introduced, and which are not to be allowed. Practically, they amount to the same thing by rendering the executor personally liable to the amount in both instances.

In discharge, executors and trustees will be allowed all reasonable expenses which have been incurred in the execution of their office,* but not such as are incurred by their own default.†

They will be allowed in discharge—

I. *Funeral expenses* of the testator.

Secus, if expenses inordinate. The allowance will be according to the testator's condition in life,‡ and what he leaves behind him.§

II. *Testamentary expenses* in proving the will, and payment of the stamp duties,

Do not include the costs of a suit occasioned by the will.‖

III. *Agent* will be allowed to an executor.

* Potts *v.* Leighton, 15 Ves. 277; Hide *v.* Haywood, 2 Atk. 126.

† Parnell *v.* Fenn, Cro. El. 348.

‡ Hancock *v.* Podmore, 1 B. and Ad. 260; Edwards *v.* Edwards, 2 Cr. and M. 612.

§ 2 Bl. Com. 508.

‖ Brown *v.* Groombridge, 4 Madd. 495.

A Solicitor will be allowed; but his bill of costs will be referred to the master, who, without regularly taxing, will moderate it if necessary.*

An Accountant will be allowed where the accounts are complex.†

An Agent to collect the assets will be allowed, if necessary.‡ So, in India, a *receiver* will be appointed on application of an executor in England.§

Allowed to a committee to inspect the property under very special circumstances.‖

IV. *Personal trouble*, and recompence for loss of time, will rarely be allowed to an executor, trustee, or committee.¶

Not for collecting assets.**

Not for professional business as a solicitor.††

Not to surviving partner's executor for carrying on the business.‡‡

Not to an agent, whom the testator has made his executor, for business done on commission after the testator's death.§§

To an executor in India, who is entitled to commission at 5 per cent. on all assets collected.‖‖ Rule adopted here as to Indian assets.¶¶ And this notwithstanding a legacy, if not given to him as executor.‖‖ *Secus* if in such character.***

* M'Namara *v.* Jones, Dick. 587; Johnson *v.* Telford, 3 Russ. 477.

† Henderson *v.* M'Ivor, 3 Madd. 275.

‡ Bonithou *v.* Hockmore, 1 Vern. 316; Davis *v.* Dendy, 3 Madd. 170; Wilkinson *v.* Wilkinson, 2 S. & S. 237.

§ Cockburn *v.* Raphael, 2 S. & S. 45. But see Stackpoole *v.* Stackpoole 4 Dow. P. C. 226. ‖ *In re* Errington, 2 Russ. 567.

¶ Robinson *v.* Pitt, 3 P. W. 249. Scattergood *v.* Harrison, Mos. 130. Brocksop *v.* Barnes, 5 Mad. 90. Anon. 10 Ves. 103.

** Weiss *v.* Dill, 3 M. & K. 26.

†† New *v.* Jones, 2 Younge. Moore *v.* Froud, appealed from.

‡‡ Burden *v.* Burden, 1 V. & B. 170.

§§ Sheriff *v.* Axe, 4 Russ. 33. Hovey *v.* Blakeman, 4 Ves. 596. But see Mos. 130.

‖‖ Cockerell *v.* Barber, 1 Sim. 23. 2 Russ. 585.

¶¶ Chetham *v.* Lord Audley, 4 Ves. 72.

*** Freeman *v.* Fairlie, 2 Mer. 24.

Not even where he has renounced the executorship, nor though he has deserved more and benefited the trust to the prejudice of his own affairs.*

Nor where he has declined to act, except for a remuneration agreed on.† The court will set aside such agreements.‡

Receiver is allowed a salary, and will be allowed extra compensation for extra trouble;§ not for attending a survey of the minor's estate.‖

V. *Misapplication* of the assets may arise in different ways, and an executor's account will not be discharged by any direct acts of abuse.

As, payment of his own debts; but if he has duly paid the debts of the testator out of his own money, he may retain the assets or effects to the same amount.¶

VI. *Payment of Debts and Legacies.*—The debts should be paid in due order, and an executor or trustee will be discharged by all proper payments of debts, and, when they are satisfied, of legacies.

If, after a reasonable time, he distribute the assets, leaving nothing to satisfy a claimant of whose claim he had no notice, he is discharged.**

Not by payment of a legacy before the debts.**

Not by payment of an inferior before a superior debt. *Secus* if he had not notice of superior within a year.††

Not by payment of a claim he was not bound to satisfy.‡‡

* Robinson *v.* Pitt, 3 P. W. 249.
† Gould *v.* Fleetwood, 3 P. W. 251 n. A.
‡ Ayliffe *v.* Murray, 2 Atk. 58.
§ Potts *v.* Leighton, 15 Ves. 273.
‖ *Re* Ormsby, 1 B. & B. 189.
¶ Com. Dig. (I. 2). Merchant *v.* Driver, 1 Saund. 307.
** Williams, 964, *et seq.*
†† Wentworth, Onge *v.* Truelock, 2 Moll. 45.
‡‡ Com. Dig. Adm. (I. 1). Vez *v.* Emery, 5 Ves. 141.

Not by payment of a bond founded on usurious contract, or *ex turpi causa*.*

Nor of a joint bond, where the testator dies before his co-obligor.

By payment of simple contract debts before specialty debts bearing interest, if the assets are sufficient.†

By payment of a debt barred by the statute of Limitations, which he is not bound to plead.‡

By payment of his own debt in equal degree first.

VII. *Expenditure.*—Extra expenditure will rarely be allowed to committees without an application.§

Repairs not allowed a receiver or committee without previous order.‖

Receivers may allow customary repairs to tenants, but not to an amount above 100*l.* a year.¶

The present practice is to direct an inquiry whether it is beneficial;¶ if so, they are admitted, and *vice versâ*. If repairs are required, a short statement ought to be submitted to the master by the receiver.**

By committee, without an order, is sometimes allowed upon approval of the master, but he should always apply.

Family charities continued by order of the chancellor.††

VIII.—*Maintenance* will be allowed an executor.

But not beyond the interest of the infant's fortune.‡‡

* Com. Dig. Adm. (I. 1). Winchcombe *v.* Bishop of Winchester, Hob. 167. Robinson *v.* Gee, 1 Ves. sen. 251.

† Turner *v.* Turner, 1 Jac. & W. 39.

‡ Norton *v.* Frecker, 1 Atk. 526. Castleton *v.* Fanshaw, Pre. Ch. 100. *Exp.* Deudney, 15 Ves. 498.

§ *Exp.* Marston, 11 Ves. 397. *Exp.* Hibbert, 11 Ves. 397.

‖ Anon. 10 Ves. 104. But see Blunt *v.* Clitherow, 6 Ves. 799.

¶ Atty. Genl. *v.* Vigor, 11 Ves. 563; 15 Ves. 26. Tempest *v.* Ord, 2 Mer. 55.

** 1 Sm. 494.

†† *Re* Reddington, 1 Moll. 256.

‡‡ Carmichael *v.* Wilson, 3 Moll. 79; overruling Walker *v.* Wetherell, 6 Ves. 473. Franklin *v.* Green, 2 Vern. 137.

In cases where the court would have authorized the capital to be broken in upon, it will sustain the act of the executor.*

But not disbursements for schooling, &c. of the deceased's children subsequently to his decease. †

To a committee for maintenance of lunatic's family.‡

IX. *Interest.*—Payments of interest will be allowed in an executor's account.

Where he has advanced money to pay importunate creditors,§ or debts bearing interest.

Not where he has delayed to pay debts carrying interest, unless the assets are insufficient.§

Not upon costs paid by him pending a suit regarding the estate.‖

Where interest is allowed on sums carrying interest, it is only from the time of the balance having been struck on the general report; for until that time it cannot be ascertained that the executor had not money in his hands.¶

An executor receiving money to which he is not entitled, must refund, although he has paid it away to creditors. **

Secus if the claimant stood by and permitted it.

In matters of interest, the practice of the courts in some respects differs from that of merchants.

When an interest account is made up, it is done either by giving a separate account of the interest under the account current, or by ruling the account current in double columns, of which the inner column contains

* Ib.

† Giles *v.* Dyson, 1 Stark, N. P. C. 32; *sed qu.* a reference would be directed.

‡ Foster *v.* Marchand, 1 Vern. 263.

§ Seaman *v.* Everard, 2 Lev. 40. Hall *v.* Hallet, 1 Cox, 134. Com. Dig. Adm. (I. 1). Small *v.* Wing, 5 Bro. P. C. 66.

‖ Gordon *v.* Trail, 8 Pr. 416. Williams, 1319. ¶ Ibid.

** Pooley *v.* Ray, 1 P. W. 355. Pickering *v.* Stamford, 2 Ves. jun. 583.

the principal sums, and the outer, the interest upon them; while the number of days for which the interest is charged is inserted between the two columns.

To make up an interest account, it is usual to allow interest upon all the sums bearing interest* on both sides, and then to balance the principal and interest account. In this operation it must be observed, that the balance of both columns must not be carried on in one sum as principal to the next account; for that, in any subsequent calculation, would have the effect of charging interest upon interest, that is compound interest, which is not permitted by the law; but the balance of the interest may be set off against the first money that comes in on the other side of the account, which is always allowable, and then the account should be carried on.

It remains only for us to enumerate the principal items which carry interest.

By the present law of usury, the legal rate of interest is *5l.* per cent. But by the statute 1 Vict., c. 80, from the 17th of July, 1837, to the 1st of Jan. 1840, all bills of exchange or promissory notes, payable at or within twelve months, are exempted from the operation of the usury laws, and upon such bills or notes unlimited interest is allowed.

* In accounts current it is not unusual to calculate the interest all at once on either side, by taking the total of the days multiplied into the total of the sums, and dividing them by 7300, which gives the interest in pounds and decimal parts of a pound. The proof of the rule is simply—

INTEREST *varies* as the PRINCIPAL *multiplied* into the TIME.

Interest required : *5l.* :: Principal × number of days : 100 × 365.

$$\therefore \text{Interest required} = \frac{\text{Principal} \times \text{number of days} \times 5.}{100 \times 365}$$

$$= \frac{\text{Pr.} \times \text{No. of days.}}{7300}$$

In all foreign matters, the courts will allow foreign interest at a higher rate.

Interest will be allowed—

On all express agreements to pay: and the agreement need not be in writing.*

On all written contracts for the payment of money by a certain day, as, on all bills of exchange, promissory notes, payable upon a day certain, or after demand if on demand.† But if no certain time specified, then from the date.‡

On mortgage.§

On purchase money of an estate unpaid.‖

On bond, with penalty, though no day of payment named.¶

Not beyond the penalty of the bond.**

Not on single bond.††

Not on a replevin bond.‡‡

Not on a recognizance of bail.§§

Not on a verdict.‖‖

On a judgment, notwithstanding almost the whole sum was for costs.¶¶

So, where a warrant of attorney is to enter up for double the amount.***

So, on an award for payment on a day certain, if duly demanded.†††

So, on a like award by a jury.‡‡‡

* *Exp.* Champion, 3 Bro. 436. *Exp.* Hankey, 3 Bro. 504. *Exp.* Mills, 2 Ves. jun. 295.

† De Havilland *v.* Bowerbank, 1 Camp. 30. Lowndes *v.* Collins, 17 Ves. 27. Lithgow *v.* Lyon, Coop. 29. Upton *v.* Lord Ferrers, 5 Ves. 801.

‡ 1 Stark. 452, 507. 1 R. and M. 381, 452.

§ Verney *v.* Iddings, 2 Chit. R. 234.

‖ Burnell *v.* Brown, 1 J. and W. 168.

¶ Farquhar *v.* Morris, 7 T. R. 124.

** Butcher *v.* Churchill, 14 Ves. 567. *Exp.* Williams, 1 Rose, 399.

†† Hogan *v.* Page, 1 B. & P. 337.

‡‡ Anon. 4 Taunt. 30.

§§ Anon. 4 Taunt. 722.

‖‖ Sarrold *v.* Reeve, 8 Pr. 582.

¶¶ Thomas *v.* Edwards, 3 Anst. 804.

*** Lawson's case, 3 Sim. 299.

††† Pinhorn *v.* Tuckington, 3 Camp. 468.

‡‡‡ Hilhouse *v.* Davis, 1 M. & S. 169.

Not on arrears of rent.*

Not on arrears of dower.†

Due on tithe composition specified to be paid on a particular day.‡

Not on money lent, at law, without a contract for the payment of interest, either express or implied.§

Not for money had and received,‖ even though paid expressly for the plaintiff's use.¶

Not even if fraudulently obtained,** but *secus* in equity.

Not on a deposit.††

Not on work and labour.‡‡

Not on goods sold,§§ even though the day of payment fixed.‖‖ *Secus* if a bill was to be given on a particular day.¶¶

Not on book-debts, even though an estate is devised to pay debts.***

Not on a policy of insurance.†††

Is allowed, where payable by the custom of the trade.‡‡‡

Agents, in account with their principals, may charge interest, and make annual accounts.§§§

Bankers, in account with their customers, are in the habit of

* Ferrers *v.* Ferrers, Forr. 2.

† Tew *v.* El Winterton, 3 Bro. 489.

‡ Shipley *v.* Hammond, 5 Esp. 114.

§ Calton *v.* Bragg, 15 East, 223. Shaw *v.* Pictors, 7 D. & R. 201. See Blaney *v.* Hendrick, 2 Bl. 761; 3 Wils. 205.

‖ Walker *v.* Constable, 1 B. & P. 806.

¶ De Bernales *v.* Fuller, 2 Camp. 426.

** Crockford *v.* Winter, 1 Camp. 129. But see 3 C. & P. 112.

†† Bromley *v.* Child, 1 Atk. 259.

‡‡ Trelawney *v.* Thomas, 1 H. B. 303. Neilson *v.* Harwood, 9 Pr. 134.

§§ Blaney *v.* Hendrick, 2 Bl. 761.

‖‖ Gordon *v.* Swan, 12 East, 410; 2 Camp. 429. Calton *v.* May, 15 East, 225.

¶¶ Tait *v.* Northwick, 4 Ves. 816.

*** Marshall *v.* Poole, 13 East, 98. Porter *v.* Palsgrove, 3 Camp. 472. Stock *v.* Lovell, 3 Taunt. 157.

††† Kingson *v.* M'Intosh, 1 Camp. 518. Higgens *v.* Sargent, 3 D. & R. 613; 2 B. & C. 348. Bushman *v.* Morgan, 5 Sim. 635.

‡‡‡ *Exp.* Williams, 1 Rose 400. *Exp.* Champion, 3 Bro. 437.

§§§ Bruce *v.* Hunter, 3 Camp. 467; Marsh, 224.

carrying forward the balance of principal and interest at the close of the year to a new account; but this is not allowed by the courts, unless the customer is cognizant;* or long acquiescence;† but they may stipulate so to do.‡

On stated accounts, interest will be allowed.§ The mere striking a balance not sufficient, without acquiescence.‖

Not recoverable in general, after a tender of the principal has been made.¶

By 3 and 4 Will. IV., c. 42, s. 28, it is enacted "that a jury may allow interest upon any debts or sums certain, if they be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment." Under which provision interest may be obtained on book-debts.

* Moore v. Voughton, 1 Stark. 407.
† Clancarty v. Latouche, 1 B. & B. 492.
‡ Eaton v. Bell, 5 B. & A. 34.
§ Blaney v. Hendrick, 2 Bl. 761; 3 Wils. 205. *Exp.* Furneaux, 2 Cox, 119.
‖ Chalie v. D. York, 6 Esp. 45.
¶ Manning v. Burgess, 1 Cha. Ca. 29; Dent v. Downe, 3 Camp. 296.

APPENDIX.

London, January, 1839.

	£	s.	d.
List of the effects of Wm. Trueman.			
Cash in hand	853	17	4
Bills receivable.			
No. 201, Josh. Strong, due Feb. 6 . . . 200 0 0			
No. 202, Josh. Strong, due Feb. 10 . . 187 10 0			
	387	10	
House in King-street	1500		
Wine.			
Port, 57 pipes, at 60*l.*	3420		
Sherry, 37 hhds. at 50*l.*	1850		
Paper, 77 reams, at 17*s.*	65	9	
Cloth, 500 yds. at 20*s.*	500		
List of Debts.			
George Williams	350		
David Archer	100		
W. Jones	360		
2			
Sold for Cash, 2 pipes of Port Wine, at 75*l.* . . .	150		
Exchanged for 3 hhds. of Sherry, at 40*l.* . . .	120		
100 yds. of Cloth, at 24*s.*			
3			
Sold for Cash, 7 yds. of Cloth, at 25*s.* 6*d.*	8	18	6
8			
Bought for Cash.			
58 reams of Paper, at 22*s.* 6*d.*	65	5	
Bought of Anthony Alexander—			
30 pipes of Port Wine, at 53*l.* 10*s.* . . 1605 0 0			
7 hhds. of Sherry, at 44*l.* 308 0 0			
	1913		

London, January, 1839.

Date	Ledger Entries		£	s.	d.	£	s.	d.
	—	11	SUNDRIES Dr to *Stock* . . .			8576	16	4
1	11	—	Cash	853	17	4		
	11	—	Bills receivable for the following bills in hand, viz.:					
			201, on Josh. Strong, due Feb. 6. . . . 200 0 0					
			202, on Josh. Strong, due Feb. 10 . . 187 10 0					
				387	10			
	12	—	House in King-street	1500				
			Wine, Stock in hand :					
	12	—	Port, 57 pipes at 60*l.* . . .	3420				
	12	—	Sherry, 37 hhds. at 50*l.* . .	1850				
	13	—	Paper, 77 reams, at 17*s.*	65	9			
	13	—	Cloth, 500 yds. at 20*s.* . . .	500				
				8576	16	4	8576	16	4
1	11	—	STOCK Dr to *Sundries* . . .	180				
	—	13	To G. Williams				350		
	—	14	D. Archer				100		
	—	14	W. Jones				360		
				810			810		
2	11	—	CASH Dr to *Wine*	150				
	—	12	To 2 pipes of Port, at 75*l.* . . .				150		
2			WINE Dr to *Cloth*					
	12	—	Sherry, 3 hhds. at 40*l.*	120				
	—	13	To 100 yds. at 24*s.*				120		
3	11	—	CASH Dr to *Cloth*	8	18	6		
	—	13	To 7 yds. at 25*s.* 6*d.*				8	18	6
3	13	—	PAPER Dr to *Cash*	65	5			
	—	11	58 reams, at 22*s.* 6*d.*				65	5	
3	—	13	WINE Dr to *Anthony Alexander.*					
	12	—	30 pipes of Port, at 53*l.* 10*s.* 1605 0 0	1605				
	12	—	7 hhds. of Sherry, at 44*l.* 308 0 0	308				
							1913		
				2257	3	6	2257	3	6

London, January, 1839.

					£	s.	d.
Paid carriage of Wine					3	7	
14							
Bought of G. Williams,							
70 yds. of Cloth, at 18*s.*					63		
15							
Accepted a Bill drawn by G. Williams.							
No. 1, payable to his order, due Feb. 18.					400		
Bought for Cash,							
130 Reams of Paper, at 15*s.*					97	10	
Received discount, on do. 10*s.*						10	
17							
Sold to David Archer,							
15 pipes of Port, at 70*l.*				1050 0 0			
For Cash	150 0 0						
For 50 yds. of Cloth, at 20*s.*	50 0 0						
For his acceptance at 1 mo. No. 203	500 0 0						
In satisfaction of debt due to him	100 0 0						
Balance on credit	250 0 0						
					1050		
Used in Counting-house,							
1 ream of Paper, at 17*s.*						17	
21							
Received of the executors of James Fish,							
My legacy of 50*l.*					50		
Paid W. Jones,							
Cash on account					100		
28							
Sold for Cash,							
15 reams of Paper, at 20*s.*				15 0 0			
20 Reams of Paper, at 18*s.*				18 0 0			
					33		
Exchanged, 2 pipes of Port, at 80*l.*	160 0 0						
and 20 yds of cloth, at 20*s.*	20 0 0						
For 200 reams of Paper, at 13*s.* 4*d.*	133 6 8						
and Cash	46 12 4						
					180		

London, January, 1839.

Date	Ledger Entries		£	s.	d.	£	s.	d.
8	14 —	PROFIT and Loss Dr to *Cash* .	3	7				
	— 11	For Carriage of Wine				3	7	
14	13 —	CLOTH Dr to *G. Williams* . .	63					
	— 13	70 yds. at 18*s*.				63		
15	13 —	G. WILLIAMS Dr to *Bills payable*	400					
	— 12	To No. 1, due Feb. 18				400		
15	13 —	PAPER Dr to *Cash* . . .	97	10				
	— 11	130 reams, at 15*s*.				97	10	
15		CASH Dr to *Profit and Loss* .		10			10	
		In Discount on Paper						
17		SUNDRIES Dr to *Wine*.						
	11 —	Cash	150					
	13 —	Cloth, 50 yds. at 20*s*. . . .	50					
	11 —	Bills receivable. My bill on David Archer, at 1 mo. No. 203, due Feb. 20. .	500					
	14 —	David Archer	350					
	— 12	To 15 pipes of Port, at 70*s*. . .				1050		
17	14 —	PROFIT and Loss Dr to *Paper* .		17			17	
	— 13	To one ream in counting-house . .						
21	11 —	CASH Dr to *Profit and Loss* .	50					
	— 14	To Legacy from the executors of James Fish				50		
21	14 —	W. JONES Dr to *Cash* . . .	100					
	— 11	To paid him on account . . .				100		
28	11 —	CASH Dr to *Paper* . . .	33					
	— 13	To 15 reams, at 20*s*.				15		
	— 13	20 reams, at 18*s*. . . .				18		
28		SUNDRIES Dr to *Sundries*.						
	13 —	Paper, 200 reams, at 13*s*. 4*d*. . .	133	6	8			
	11 —	Cash	46	13	4			
	— 12	To Port, 2 pipes, at 80*l*. . . .				160		
	— 13	Cloth, 20 yds. at 20*l*. . . .				20		
			1978	4		1978	4	

London, January, 1839.

		£		d.
28				
Accepted a Bill, drawn at 2 mo. by Anthony Alexander. No. 2, payable to his order, due March 31		1000		
Sold to David Archer, 14 reams of Paper, at 20*s.*		14		
30				
Sold to W. Cooper, 15 yds. of Cloth, at 26*s.* 8*d.*	20 0 0			
15 yds. ditto, at 27*s.* 8*d.*	20 15 0			
		40	15	
Sold to Wm. Jones, 413 reams of Paper, at 13*s.* 4*d.*		275	6	8
31				
Sold to Anthony Alexander, 567 yds. of Cloth, at 20*s.*		467		
Paid G. Evans, my clerk, Half-year's salary, 20*l.*		20		
Paper damaged, 2 reams, at 17*s.*		1	14	
		1818	15	8

The following is a trial balance for January, taken before the books are made up, and the profits and losses ascertained. The last three items of the journal are therefore omitted in taking the sum total of the transactions below.

Journal. Pages.	£	s.	d.	Dr £	s.	d.		Cr £	s.	d.
1	8576	16	4	810	0	0	Stock.	8576	16	4
1	810	0	0	1292	19	2	Cash.	286	2	0
1	2257	3	6	887	10	0	Bills rec.	0	0	0
2	1978	4	0	0	0	0	Bills pay.	1400	0	0
3	1818	15	8	1500	0	0	House.	0	0	0
				7303	0	0	Wine.	1360	0	0
	15440	19	6	361	10	8	Paper.	324	17	8
				613	0	0	Cloth.	656	13	6
				1467	0	0	Alexander.	1913	0	0
				400	0	0	Williams.	413	0	0
				364	0	0	Archer.	100	0	0
				40	15	0	Cooper.	0	0	0
				375	6	8	Jones.	360	0	0
				25	18	0	Pro. & Loss.	50	10	0
				15440	19	6		15440	19	6

London, January, 1839.

Date	Ledger Entries		£	s.	d.	£	s.	d.
28	13 —	A. Alexander Dr to *Bills payable*	1000					
	— 12	To No. 2, at 2 mo. due March 31 . .				1000		
	14 —	David Archer Dr to *Paper* .	14					
	— 13	To 14 reams, at 20*s*.				14		
30	14 —	W. Cooper Dr to *Cloth* . .	40	15				
	— 13	To 15 yds. at 26*s*. 8*d*.				20		
		15 yds. at 27*s*. 8*d*. . . .				20	15	
	14 —	W. Jones Dr to *Paper* . . .	275	6	8			
	— 13	To 413 reams, at 13*s*. 4*d*. . . .				275	6	8
31	13 —	A. Alexander Dr to *Cloth* . .	467					
	— 13	To 467 yds. at 20*s*.				467		
	14 —	Profit and Loss Dr to *Cash* . .	20					
	— 11	To G. Evans's Salary . . .				20		
	14 —	Profit and Loss Dr to *Paper* .	1	14				
	— 13	To 2 reams damaged, at 17*s*. . .				1	14	
			1818	15	8	1818	15	8
	14 —	Profit and Loss Dr to *Paper* . .	36	13				
	— 13	For Loss to this date				36	13	0
	— 14	Sundries Dr to *Profit and Loss.*						
		For Profit to this date:						
	12 —	Wine	487					
	13 —	Cloth	43	13	6			
						530	13	6
	14 —	Profit and Loss Dr to *Stock.*						
	— 11	For Profit during January . . .	518	12	6	518	12	6

We here close the system of the old Italian method. It is common in practice at the foot of the Journal to introduce the balance sheet, but it will be found in the Ledger balance account, which, in the original system, is its most appropriate place.

The accounts are henceforth for February and March, continued according to the present practice. The Waste-book is superseded by the subsidiary books, which follow in Appendix IV. V. VI. VII. VIII. IX. X.; the contents of which are here journalized, and thence carried into the Ledger, in which the Profit and loss account is also divided into different subsidiary accounts.

London, February, 1839.

Date	Page Ledger						£	s.	d.
28	11	—	CASH Dr to *Sundries.*						
			As per Cash-book fol. 18.						
6	—	11	To Bills receivable, No. 201, J. Strong			200 0 0			
9			202, Ditto			187 10 0			
20			203, D. Archer			500 0 0			
							887	10	
28	—	12	To Rent of house in King-street				56		
			To the following persons:	For Sundries.		Discount allowed.			
4	—	16	G. Georges	700 0 0		25 0 0	675		
28	—	1	Ditto	657 0 0		37 0 0	620		
18	—	14	W. Jones	1200 0 0		32 0 0	1168		
28	—	14	W. Cooper	200 0 0			200		
				2757 0 0					
					Dedt.	94 0 0			
							3606	10	
28	—	11	SUNDRIES Dr to *Cash.*						
—			As per Cash-book, fol. 18.						
18	12	—	Bills payable, No. 1, G. Williams				400		
			Insurances:						
7	16	—	Sales per the Argosy				5		6
18	16	—	Shipment per the Hector				131	16	
28	16	—	Charges Merchandise:						
			Per the Hector			56 4 8			
			Petty Cash			5 0 0			
							61	4	8
28	12	—	House in King-street, for repairs				40	15	
14	15	—	H. Hurley	For Goods.		For Discount.			
				22 2 9		0 11 3			
				16 6 9		0 8 3			
			Cash	38 9 6			37	10	
						0 19 6			
							676	6	2

London, February, 1839.

Date	Page Ledger					£	s.	d.
28	11	—	BILLS RECEIVABLE Dr to *Sundries.*					
			As per Bill-book, fol. 20.					
28	—	14	To W. Cooper, No. 204, due Mar. 30			1000		
	—	15	Messrs. Ford & Co. 205, Mar. 13,	500	0 0			
	—	15	Ditto, 206, Mar. 14,	300	0 0			
						800		
						1800		
28	—	12	SUNDRIES Dr to *Bills payable.*					
			As per Bill-book, fol. 20.					
14	14	—	David Archer, No 4, due March 13.			500		
27	16	—	G. Georges, 5, Ap. 30	1000	0 0			
			Ditto, 6, Mar. 30	300	0 0			
						1300		
14	14	—	W. Jones, 7, Mar. 16			600		
4	13	—	A. Alexander, 3, Mar. 7	500	0 0			
14	13	—	Ditto, 8, Mar. 17	1000	0 0			
						1500		
						3900		
28	15	—	MERCHANDISE Dr to *Sundries.*					
			As per Bought-book, fol. 22.					
4	—	15	To Henry Hurley, as per bills of parcel, 4th	22	2 9			
11			Ditto, ditto, 11th	16	6 9			
						38	9	6
6	—	13	To A. Alexander, as per B. P. 6th			1459	3	
4	—	16	G. Georges, ditto, 4th	77	10 0			
18			Ditto, ditto, 18th	372	15 0			
27			Ditto, ditto, 27th	936	6 8			
						1386	11	8
6	—	14	To D. Archer, as per B. P. 6th	532	0 0			
9	—	14	Ditto, ditto, 9th	327	10 0			
						859	10	0
14	—	14	To William Jones, as per B. P. 11th			632	15	0
						4376	9	2

London, February, 1839.

Date	Page Ledger			£	s.	d.
28	—	15	SUNDRIES Dr to *Merchandise.*			
26	16	—	G. Georges, 14 hhds of Sherry, at 70*l.* 700 0 0			
—			Ditto, 25 punchns. Rum, at 4*s.* 8*d.* pr. gal. 657 0 0			
				1357		
18	14	—	W. Jones, 15 pipes of Port, at 80*l.* . . .	1200		
				2557		
26			SUNDRIES Dr to *Sundries.*			
—			For goods shipped on board the Hector, James Skipper, master, for Jamaica, as per invoices of this date.			

			P. Inv.	Amount of Goods.	Freight and Charges.	Insurance.	Commissn.			
		— Dr —								
11	13	—	G. Williams	1566 18 6	22 14 4	51 5 0	48 6 1	1689	3	11
12	14	—	W. Cooper	1520 8 4	20 2 10	49 4 0	46 17 1	1636	12	3
19	15	—	Mssrs. Ford	939 2 8	13 7 6	31 7 0	29 0 6	1012	17	8
			— Cr —							
		—	15 Merchandise	4026 9 6						
		—	16 Charges Merchandise		56 4 8					
		—	16 Insurance			131 16 0				
		—	16 Commission				124 3 8			
								4338	13	10
14	15	—	H. HURLEY Dr to *Interest.*							
	—	15	For Discount allowed						19	6
28	15	—	INTEREST Dr to *Sundries.*							
—			For the following Discounts:							
4	—	16	G. Georges					25		
28	—	16	Ditto					37		
18	—	14	W. Jones					32		
28	—	15	Messrs. Ford and Co.					10		
								104		

London, March, 1839.

Date	Page Ledgr.						£	s.	d.
30	11	—	CASH Dr to *Sundries.*						
—			As per Cash-book, fol. 18.						
13	—	11	To Bills receivable, No. 205. Ford & Co.	500	0	0			
14			206. Ditto.	300	0	0			
30			204. W. Cooper	1000	0	0			
							1800		
19	—	11	To Stock.						
			For Legacy from the executors of Jas. Fish, upon the death of the tenants for life				715		
							2515		
30									
—	—	11	SUNDRIES Dr to *Cash.*						
7	12	—	Bills payable, No. 3, A. Alexander	500	0	0			
16			8, Ditto	1000	0	0			
30			2, Ditto	1000	0	0			
13			4, D. Archer	500	0	0			
16			7, W. Jones	600	0	0			
30			6, G. Georges	300	0	0			
							3900		
	16	—	Charges, Merchandise,						
4			Duty on 21 hhds. of Sugar, per Argosy, on account of Messrs. Jenkins & Co.	386	6	0			
6			Freight, Lighterage, &c. on ditto	86	6	0			
14			Per the Electra	44	16	3			
30			Per the Argosy	79	11	6			
			Per petty cash	10	0	0			
							606	19	9
	16	—	Insurance,						
			On goods per the Electra				184	5	
							4691	4	9
30	11	—	BILLS RECEIVABLE Dr to *Sundries.*						
			As per Bill-book, fol. 1.						
1	—	13	To G. Williams No. 207	due April 4			1000		
16	—	13	Anthony Alexander 208	June 19			1216		
16	—	15	Messrs. Ford 209	June 14			773	3	9
18	—	14	W. Jones 210	May 21		1000			
30			Ditto 211	June 3		1000			
							2000		
							4989	3	9

London, March, 1839.

Date	Page Ledger			£	s.	d.
30			G. Georges Dr to *Bills Payable.*			
	16	12	No. 9. to order, due June 3	1200		
30	15	—	Merchandise Dr to *Sundries.*			
	—	15	To H. Hurley, as per B. P. . 11 . . .	500		
	—	16	G. Georges, as per B. P. . 12 . 432 15 4			
			23 . 277 4 8	710		
	—	14	W. Jones, as per B. P. . 12 . 226 3 6			
			Ditto . . . 26 . 554 15 0	780	18	6
				1990	18	6
8	13	—	Sundries Dr to *Merchandise.*			
	—	15	G. Williams,			
			To 31 tons of Campeachy Logwood, at 15*l.* . 465			
			25 tons of Savanilla Fustic, at 10*l.* 12*s.* . 265	730		
14			Sundries Dr to *Sundries.*			

For goods shipped on board the Electra, John Bell, master, for Alexandria, as per invoices of this date.

		P. Inv.	Amount of Goods.	Freight & Charges.	Insurance.	Commissn.			
— Dr —									
13	—	A. Alexander	2980 0 0	22 14 0	97 14 0	91 5 11	3191	13	11
15	—	Ford & Co.	714 10 0	6 14 9	26 15 0	25 4 0	773	3	9
14	—	W. Jones	1761 13 10	15 7 6	59 16 0	56 6 9	1893	4	1
— Cr —									
—	15	Merchandise	5456 3 10						
—	16	Charges Merchandise		44 16 3					
—	16	Insurance			184 5 0				
—	16	Commission				172 16 8	5858		9

London, March, 1839.

Date	Page Ledger			£	s.	d.
25	16	—	SALES of CONSIGNMENTS Dr to *Sundries.*			
			For proceeds of 21 hhds. of Sugar, as per the Argosy, as per Sale-book, fol. 23.			
4	—	16	To Insurance	5	0	6
4	—	16	Charges Merchandise	472	12	
24	—	16	Commission	16	4	
24	—	16	Messrs. Jenkins and Co. net proceeds . . .	148	13	6
				642	10	
25	14	—	W. JONES Dr to *Sales of Consignments.*			
	—	16	For 21 hhds. of Sugar	642	10	
30			SUNDRIES Dr to *Sundries.*			
			For Goods shipped on board the Argosy, Captain Mead, as per invoices of this date.			

		P. Inv.	Amount of Goods.	Freight and Charges.	Commission			
	Dr							
15	—	Hy. Hurley . .	622 1 6	16 9 0	19 0 3	657	10	9
14	—	D. Archer .	1286 5 0	38 17 6	36 3 4	1361	5	10
14	—	W. Jones . .	917 12 0	24 5 0	23 3 8	965	0	8
		Cr						
		To accounts as below	2825 18 6					
	—	16	Charges Merchandise . .	79 11 6				
	—	16	Commission		78 7 3	3983	17	3
	—	13	To Anthony Alexander			1570		
	—	14	Wm. Cooper			920	17	
	—	16	G. Georges			335	1	6
						2825	18	6
30	15	—	INTEREST Dr to *Sundries.*					
	—	13	To A. Alexander, to balance his account . .				10	11
	—	11	Stock for ½ year's interest on capital . . .			106	14	6
						107	5	5

London, March, 1839.

Date	Page Ledgr			£	s.	d.
30	14	—	PROFIT and Loss Dr to *Sundries.*			
			For Loss on the following:			
	—	15	Interest	210	5	11
	—	16	Charges Merchandise	15		
				225	5	11
30		14	SUNDRIES Dr to *Profit and Loss.*			
			For Profit on the following:			
	12	—	House in King-street	15	5	
	15	—	Merchandise	952	5	8
	16	—	Commission	391	11	7
				1359	2	3
30	14	—	PROFIT and Loss Dr to *Stock.*			
	—	11	For Balance, being the Profit for the last two months	1133	16	4
30	15	—	BALANCE Dr to *Sundries.*			
	—	11	Cash	1760	16	3
	—	11	Bills receivable	4989	3	9
	—	12	House in King-street	1500		
	—	15	Merchandise	980		
	—	13	G. Williams	1406	3	11
	—	14	D. Archer	1265	15	10
	—	14	W. Jones	702	7	11
	—	15	H. Hurley	157	10	9
	—	15	Messrs. Ford	202	17	8
	—	16	G. Georges	68	5	10
				13033	2	11
30	—	15	SUNDRIES Dr to *Balance.*			
	12	—	Bills payable	2200		
	14	—	W. Cooper	443	9	9
	16	—	Messrs. Jenkins and Co.	148	13	6
				2792	3	3

The last five journal posts of Profit and Loss and Balance, are usually brought through the Journal, as above, but there is no absolute necessity for it (as they are only transfers from one ledger account to another), except the important advantage of keeping the journal as a complete chronicle of the whole business. The Balance and Profit and Loss accounts contain the entire Ledger except the Stock account, which they balance. (See the observations in p. 30.)

APPENDIX II.—LEDGER.

INDEX.

1839.			£	s.	d.
	STOCK.				
Dr					
January 1	To Sundry accounts	1	810		
31	To Balance		8285	8	10
			9095	8	10
	To Balance		10240	19	8
			10240	19	8
	CASH.				
Dr					
January 1	To Stock	1	853	17	4
2	To Wine, 2 pipes Port, at 75*l.*	1	150		
3	To Cloth, 7 yds. at 25*s.* 6*d.*	1	8	18	6
15	To Profit and Loss, for Discount on payment.	2		10	
17	To Wine, as per Journal	2	150		
21	To Legacy from James Fish	2	50		
28	To Paper as per Journal	2	33		
	To Sundries	2	46	13	4
			1292	19	2
	To Balance		1006	17	2
Feb. 28	To Sundries	4	3606	10	
March 30	To Sundries	7	2515		
			7128	7	2
	BILLS RECEIVABLE.				
Dr					
January 1	To Stock	1	387	10	
17	To Wine, for my bill on David Archer, No. 203, due Feb, 20	2	500		
			887	10	
Jan. 31	To Balance		887	10	
Feb. 28	To Sundries	5	1800		
March 30	To Sundries	7	4989	3	9
			7676	13	9

1839.			Cr £	s.	d.
	CONTRA.				
Jan. 1	By Sundry accounts	1	8576	16	4
	By Profit		518	12	6
			9095	8	10
31	By Balance		8285	8	10
March 19	By Legacy	7	715		
	By ½ year's Interest	9	106	14	6
	By Profit		1133	16	4
			10240	19	8
	CONTRA		Cr		
Jan. 8	By Paper, 58 reams, at 22*s*. 6*d*.	1	65	5	
	By Profit and Loss, for carriage of wine	2	3	7	
15	By Do. 130 reams, at 15*s*.	2	97	10	
21	By W. Jones, on account	2	100		
31	By Profit and Loss. G. Evans' Salary	3	20		
31	By Balance		1006	17	2
			1292	19	2
Feb. 28	By Sundries	4	676	6	2
March 30	By Sundries	7	4691	4	9
	By Balance		1760	16	3
			7128	7	2
	CONTRA.		Cr		
Jan. 31	By Balance		887	10	
			887	10	
Feb. 28	By Cash	4	887	10	
March 30	By Cash	7	1800		
	By Balance		4989	3	9
			76 76	13	9

1838.

BILLS PAYABLE.

			£	s.	d.
Dr					
Jan. 31	To Balance		1400		
			1400		
Feb. 8	To Cash	4	400		
March 30	Cash		3900		
	Balance		2200		
			6500		

HOUSE IN KING-STREET.

Dr					
Jan. 1	To Stock	1	1500		
31	Balance		1500		
	Repairs	4	40	15	
	Profit*		15	5	
			1556		

WINE.

		Port. Pipes.	Sherry. Hhds.	£	s.			
Dr								
Jan. 1	To Stock	57		at 60	0	1	3420	
			37	50	0	1	1850	
2	To Cloth		3	40	0	1	120	
8	To A. Alexander	30		53	10	1	1605	
			7	44	0	1	308	
31	To Profit						487	
		87	47				7790	
31	To Balance†	68		60	0		4080	
			47	50	0		2350	
		68	47				6430	

* To balance the account of a house or ship, an estimate of its value is put upon it at the time of the rest; and then the balance of the account must be carried to the profit and loss account as the clear gain which it has produced.

† As the merchant, in February gives up dealing in continuous articles of merchan-

1838.							
	CONTRA.				C^r		
Jan. 15	By G. Williams on me, No. 1, at one month, due Feb. 18			2	£ 400	s.	d.
28	By Anthony Alexander on me, No. 2, at two months, due March 30			3	1000		
					1400		
31	By Balance				1400		
Feb. 28	By Sundries			5	3900		
Mar. 30	By Georges			8	1200		
					6500		
	CONTRA				C^r		
Jan. 31	By Balance				1500		
Feb. 28	By Rent			4	56		
	By Balance				1500		
					1556		
	CONTRA.				C^r		
		Port. Pipes.	Sherry. Hhds.	£ s.			
Jan. 2	By Cash	2		at 75 0	1	150	
17	By Sundries	15		70 0	2	1050	
28	By Sundries	2		80 0	2	160	
	By Balance	68		60 0		4080	
			47	50 0		2350	
		87	47			7790	
31	By Balance transferred to the Merchandise account				15	6430	
						6430	

dise, this balance is transferred to the general merchandise account, and disposed of among the other goods that come in. It ought, therefore, to have been transferred at once from the last balance-sheet; but the account has been here reopened for perspicuity, and to explain the transaction.

1839.

Dr — PAPER.

		Reams.						£	s.	d.
Jan. 1	To Stock	77	at 17	0	. . . .	1		65	9	
8	To Cash	58	22	6	. . . .	1		65	5	
15	To Cash	130	15	0	. . . .	2		97	10	
27	To Sundries	200	13	4	. . . .	2		133	6	8
		465						361	10	8

Dr — CLOTH.

		Yards.								
Jan. 1	To Stock	500	at 20	0	. . . .	1		500		
14	To G. Williams	70	18	0	. . . .	2		63		
17	To Wine	50	20	0	. . . .	2		50		
	To Outcome*	4								
	To Profit . .		. . . . .			3		43	13	6
		624						656	13	6

Dr — ANTHONY ALEXANDER, OF THAMES-STREET.

Jan. 28	To Bills payable, No. 2	3	1000			
31	To Cloth, 467 yards, at 20*s.*	3	467			
	To Balance	10	446			
			1913			
Feb. 14	To Bills payable	5	1500			
Mar. 14	To Sundries	8	3191	13	11	
			4691	13	11	

Dr — GEORGE WILLIAMS.

Jan. 15	To Bills payable, No. 1, on me, due Feb. 18 .	2	400			
20	To Balance	10	13			
			413			
Feb. 11	To Sundries	6	1689	3	11	
8	To Merchandise	8	730			
			2419	3	11	

* An example of Outcome by overmeasure.

1839.														
		CONTRA									C^r		
		Reams.		s.	d.						£	s.	d.
Jan. 17	By Profit and loss	1	at	17	0	.	.			2		17	
28	By Cash	15		20	0	.	.			2	15		
	By Cash	20		18	0	.	.			2	18		
28	By D. Archer	14		20	0	.	.			3	14		
30	By W. Jones	413		13	4	.	.			3	275	6	8
31	By Damaged*	2		17	0	.	.			3	1	14	
	By Loss										36	13	
		465									361	10	8
		CONTRA.									C^r		
		Yards.		s.	d.								
Jan. 2	By Wine	100	at	24	0	.	.			1	120		
3	By Cash	7		25	6	.	.			1	8	18	6
28	By Sundries	20		20	0	.	.			2	20		
30	By W. Cooper	15		26	8	.	.			3	20		
	By Ditto	15		27	8	.	.			3	20	15	
31	By A. Alexander	467		20	0	.	.			3	467		
		624									656	13	6
		CONTRA.									C^r		
Jan. 8	By Wine									1	1913		
											1913		
31	By Balance										446		
Feb. 6	By Merchandise									5	1459	3	
Mar. 30	By Sundries									9	1570		
16	By Bills receivable									7	1216		
30	By Interest									9		10	11
											4691	13	11
		CONTRA.									C^r		
Jan. 1	By Stock									1	350		
14	By 70 yards, at 18s., ...									2	63		
											413		
31	By Balance										13		
Mar. 1	By Bill receivable									7	1000		
30	By Balance									10	1406	3	11
											2419	3	11

* This is an example of Intake by damage.

1839.	Dr		£	s.	d.
	DAVID ARCHER.				
Jan. 17	To Wine	2	350		
28	To Paper, 14 reams, at 20*s.*	3	14		
			364		
	To Balance		264		
Feb. 14	To Bill payable	5	500		
Mar. 30	To Sundries	9	1361	5	10
			2125	5	10
Dr	**W. COOPER.**				
Jan. 30	To Cloth, 15 yards, at 26*s.* 8*d.* 20 0 0				
	To Ditto ditto 27*s.* 8*d.* 20 15 0				
		3	40	15	
31	To Balance		40	15	
Feb. 12	To Sundries	6	1636	12	3
	To Balance	10	443	9	9
			2120	17	
Dr	**WM. JONES.**				
Jan. 21	To Cash on account	2	100		
30	To Paper, 413 reams, at 13*s.* 4*d.*	3	275	6	8
			375	6	8
31	To Balance		15	6	8
Feb. 14	To Bills payable	5	600		
18	To Merchandise	6	1200		
Mar. 14	To Sundries	8	1893	4	1
25	To Sales, per the Argosy	9	642	10	
30	To Sales, per the Hector	9	965		8
			5316	1	5
Dr	**PROFIT AND LOSS.**				
Jan. 8	To Cash for carriage of Wine	2	3	7	
17	To Paper, 1 ream, for Counting-house	2		17	
31	To Cash for G. Evans's salary	3	20		
	To Paper, 2 reams damaged	3	1	14	
	To Paper for Loss		36	13	
	To Stock for Profit	3	518	12	6
			581	3	6
Mar. 30	To Sundries	10	225	5	11
	To Stock for Profit	10	1133	16	4
			1359	2	3

1839.			£	s.	d.
	CONTRA.	Cr			
Jan. 1	By Stock	1	100		
	By Balance	10	264		
			364		
Feb. 6	By Merchandise	5	859	10	
Mar. 31	By Balance	10	1265	15	10
			2125	5	10
	CONTRA.	Cr			
Jan. 31	By Balance	10	40	15	
Feb. 28	By Cash on account	4	200		
28	By Bills receivable	5	1000		
Mar. 30	By Sundries	9	920	17	
			2120	17	
	CONTRA.	Cr			
Jan. 1	By Stock	1	360		
31	By Balance		15	6	8
			375	6	8
Feb. 18	By Cash	4	1168		
18	By Discount	6	32		
14	By Merchandise	5	632	15	
Mar. 12	By Ditto	8	780	18	6
18	By Bills receivable	7	2000		
	By Balance	10	702	7	11
			5316	1	5
	CONTRA.	Cr			
Jan. 15	By Cash for discount on Paper	2		10	
21	By Legacy	2	50		
31	By Wine	3	487		
	By Cloth	3	43	13	6
			581	3	6
Mar. 30	By Sundries	10	1359	2	3
			1359	2	3

1839.			£	s.	d.
	Dr BALANCE.				
	To Cash		1006	17	2
Jan. 31	To Bills receivable		887	10	
	To House in —— street		1500		
	To Wine. Port		4080		
	To Wine. Sherry		2350		
	To D. Archer		264		
	To W. Cooper		40	15	
	T. W. Jones	10	15	6	8
			10144	8	10
Mar. 30	To Sundries		13033	2	10
	Dr MERCHANDISE.				
	To Balance of Wine account	12	6430		
Feb. 28	To Sundries	5	4376	9	2
Mar. 30	To Sundries	8	1990	18	6
	To Profit	10	952	5	8
			13749	13	4
	Dr INTEREST.				
Feb. 28	To Sundries	6	104		
Mar. 30	To Sundries	9	107	5	5
			211	5	5
	Dr HY. HURLEY, THAMES-STREET.				
Feb. 14	To Cash	4	37	10	
	To Interest	6		19	6
Mar. 30	To Sundries	9	657	10	9
			696		3
	Dr MESSRS. FORD & Co.				
Feb. 19	To Sundries	6	1012	17	8
Mar. 14	To Sundries	8	773	3	9
			1786	1	5

1839.			£	s.	d.
	CONTRA.	Cr			
	By Bills payable		1400		
Jan. 31	By A. Alexander		446		
	By O. Williams		13		
	By Stock		8285	8	10
			10144	8	10
			2792	3	3
Mar. 30	By Sundries	10	10240	19	8
			13033	2	11
	CONTRA.	Cr			
Feb. 26	By Sundries, Cash	6	2557		
	By Net for Discount				
28	By Sundries	6	4026	9	6
Mar. 8	By G. Williams	8	730		
14	By Sundries	8	5456	3	10
30	By Balance of Goods on hand, as per Stock book	10	980		
			13749	13	4
	CONTRA.	Cr			
Feb 14	H. Hurley	6		19	6
Mar. 30	By Loss	10	210	5	11
			211	5	5
	CONTRA.	Cr			
Feb. 4	By Merchandise	5	38	9	6
Mar. 11	By Sundries	8	500		
30	By Balance	10	157	10	9
			696		3
	CONTRA.	Cr			
Feb. 28	By Bills receivable	5	800		
	By Discount on ditto	6	10		
Mar. 16	By Bills receivable	7	773	3	9
	By Balance	10	202	17	8
			1786	1	5

1839.			£	s.	d.
	D$_r$ GEORGE GEORGES.				
Feb. 26	To Merchandise	6	1357		
27	To Bills payable	5	1300		
Mar. 30	To Bills payable	8	1200		
	To Balance				
			3857		
	D^r SALES OF CONSIGNMENT.				
Feb. 25	To Sundries, per the Argosy	9	642	10	
	D^r MESSRS. JENKINS & Co.				
Mar. 30	To Balance		148	13	6
	D^r CHARGES MERCHANDISE.				
Feb. 28	To Cash	4	61	4	8
Mar. 30	To Cash	7	606	19	9
			668	4	5
	D^r INSURANCES.				
Feb. 7	To Cash	4	5		6
18	To Cash	4	131	16	
Mar. 14	To Cash	7	184	5	
			321	1	6
	D^r COMMISSION.				
Feb.	To Profit and Loss for Profit	10	391	11	7
			391	11	7

1839.			£	s.	d.
	CONTRA. Cr				
Feb. 4	By Cash	4	675		
	By Discount	6	25		
	By Merchandise	5	1386	11	8
28	By Cash	4	620		
	By Discount	6	37		
Mar. 24	By Merchandise	9	335	1	6
12	By Sundries	8	710		
	By Balance	10	68	6	10
			3857		
	CONTRA. Cr				
Feb. 25	By W. Jones	9	642	10	
	CONTRA. Cr				
Mar. 25	To proceeds of Sales per the Argosy	9	148	13	6
	CONTRA. Cr				
Feb. 26	By Sundries	6	56	4	8
Mar. 14	By Sundries, per the Electra	8	44	16	3
25	By Sales, per the Argosy	9	472	12	
30	By Sundries, per the Argosy	9	79	11	6
30	By Profit and Loss for Loss	10	15		
			668	4	5
	CONTRA. Cr				
Feb. 26	By Sundries	6	131	16	
Mar. 14	By Sundries	8	184	5	
25	By Sales, per the Argosy	9	5		6
			321	1	6
	CONTRA. Cr				
Feb. 26	By Sundries	6	124	3	8
Mar. 14	By Sundries	8	172	16	8
	By Sales, per the Argosy	9	16	4	
30	By Sundries, per the Argosy	9	78	7	3
			391	11	7

1839.		£	s.	d.
	D^r JOINT CAPITAL.			
Jan. 1	To Stock	10000		
June 30	To Interest on Capital	250		
	To Profit*	3547	3	
		13797	3	
	D^r INTEREST.			
June 30	To W. Trueman, on £5000	125		
	To G. Thomas, on £2500	62	10	
	To H. Curris, on £2500	62	10	
		250		
	D^r PROFIT.			
June 30	To W. Trueman, his ½ share	1773	11	6
	To G. Thomas, his ¼ share	886	15	9
	To H. Curris, his ¼ share	886	15	9
		3547	3	
	D W. TRUEMAN.			
June 30	To Capital withdrawn	270		
	To Balance	6628	11	6
		6898	11	6
	D^r G. THOMAS.			
June 30	To Capital withdrawn	150	3	
	To Balance	3299	2	9
		3449	5	9
	D^r H. CURRIS.			
June 30	To Capital withdrawn	160		
	To Balance	3289	5	9
		3449	5	9

* The Stock, Interest, and Profit are brought over from the Stock Account in the Business Ledger.

N.B. This Partnership Account is not in any manner connected with the preceding.

1839.			£	s.	d.
	CONTRA.	Cr			
June 30	By W. Trueman, P. A.*		270		
	By G. Thomas, P. A.		150	3	
	By H. Curris, P. A.		160		
	By Balance		13217		
			13797	3	
	CONTRA.	Cr			
June 30	By Capital		250		
			250		
	CONTRA.	Cr			
June 30	By Capital		3547	3	
			3547	3	
	CONTRA.	Cr			
June 30	By Capital		5000		
	By Interest		125		
	By Profit		1773	11	6
			6898	11	6
	CONTRA.	Cr			
June 30	By Capital		2500		
	By Interest		62	10	
	By Profit		886	15	9
			3449	5	9
	CONTRA.	Cr			
June 30	By Capital		2500		
	By Interest		62	10	
	By Profit		886	15	9
			3449	5	9

* What each party has withdrawn appears by his Private Account opened in the Business Ledger.

Dr CASH.

1839.	*Receipts.*		Bankers. £	s.	d.	At home. £	s.	d.
February 1	To Balance in hand . .	1006 17 2						
			900			106	17	2
4	To G. Georges, for Merchandise . . .	700 0 0						
	To Discount allowed . .	25 0 0						
			675					
6	To Bills receivable, No. 201, J. Strong		200					
9	To Bills receivable, No. 202, J. Strong		187	10				
18	To W. Jones, for Merchandise . . .	1200 0 0						
	To Discount	32 0 0						
			1168					
20	To Bills receivable, No. 203, David Archer . . .		500					
28	To W. Cooper, on account . .		200					
	To Rent of House in King-street .					56		
	To G. Georges, for Merchandise . . .	657 0 0						
	Discount	37 0 0						
			620					
			4450	10		162	17	2
March	To Balance in hand . . .		3862	9	4	74	11	8
13	Bills receivable, No. 205, Ford & Co.		500					
14	Bills receivable, No. 206, Ford & Co.					300		
	Legacy from the Executors of James Fish, on death of the tenant for life		715					
30	Bills receivable, No. 204, W. Cooper		1000					
			6077	9	4	374	11	8

CONTRA. Cr

1839.	*Payments.*	Bankers. £	*s.*	*d.*	At home. £	*s.*	*d.*
February 7	By Insurance on Sugar, per the Argosy				5		6
14	By H. Hurley, as per Bills of Parcels				37	10	
18	By Bills payable, No. 1, G. Williams	400					
	By Insurance Goods, per the Hector	131	16				
28	By Charges Merchandise, per the Hector	56	4	8			
	By Repairs of House in King-street				40	15	
	By Petty Cash				5		
	By Balance	3862	9	4	74	11	8
		4450	10		162	17	2
March 4	By Duty on Goods, per Argosy	386	6				
6	By Charges Merchandise, per the Argosy, per S. Beck	86	6				
7	By Bills payable, No. 3, A. Alexander	500					
13	By Bills payable, No. 4, D. Archer	500					
14	By Charges, per the Electra				44	16	3
	Insurance, ditto				184	5	
16	By Bills payable, No. 8, A. Alexander	1000					
	By Bills payable, No. 7, W. Jones	600					
30	By Bills payable, No. 6, G. Georges	300					
	By Bills payable, No. 2, A. Alexander	1000					
30	By Charges, Goods shipped per the Argosy	79	11	6			
	By Petty Cash				10		
	By Balance	1625	5	10	135	10	5
		6077	9	4	374	11	8

PETTY CASH-BOOK.

1839.		£	s.	d.
Feb. 1	Cash on Account	5		
		5		
Mar. 1	To Balance	1	5	9
	Cash on Account	10		
		11	5	9
April 1	To Balance	3	3	9

If a Petty Cash-book is kept in this form, it is only necessary to enter the sums upon the debit side of it in the Cash-book, as they are drawn, viz. £5, for February and £10 for March, taking no further notice of the items in the

PETTY CASH-BOOK.

1839.		£	s.	d.	£	s.	d.
Feb. 2	Postage of 2 Letters		1	6			
7	Porterage of a Parcel			8			
8	Carriage of Goods from		17	6			
11	Stationery	1	13	4			
15	Postage of 3 Letters		2	6			
21	Candles		4	9			
27	Postage		14				
					3	14	3
	By Balance	1	5	9			
		5					
Mar. 1	Carriage of Goods from	1	2	6			
7	Charges on Goods per the Argosy	4	13	6			
	Postage of 2 Letters		5	6			
	Coals	1	12				
14	Postage		7				
	Porterage		1	6			
					8	2	
	By Balance	3	3	9			
		11	5	9			

books. Another method is to omit the debit side altogether, and carry the actual sums expended into the outer columns, as above, and thence into the Cash-book.

BILL BOOK.

BILLS OF EXCHANGE.

Pa. Jour.	No.	When Rec^{d}.	Of whom Received.	Drawer.	On whom Drawn.
1	201	Jan. 1	Joseph Strong	Joseph Strong	James Skinner
1	202	1	Joseph Strong	Joseph Strong	John Harvey
2	203	17	David Archer	David Archer	George Brown
5	204	Feb. 28	William Cooper	W. Cooper	T. Taylor
5	205	28	Messrs. Ford & Co.	James Bing	W. Hastings
5	206	28	Messrs. Ford & Co.	James Bing	W. Hastings
7	207	Mar. 1	G. Williams	John Castle	W. Brown
7	208	16	A. Alexander	A. Alexander	John Callow
7	209	16	Messrs. Ford	Messrs. Ford	James Skinner
7	210	18	W. Jones	W. Jones	W. Brook
7	211	30	W. Jones	W. Jones	W. Brook

BILLS OF EXCHANGE.

Pa. Jour.	No.	By whom Drawn.	Place.	By whom Payable.
2	1	George Williams	London*	Order
3	2	Anthony Alexander	Ditto	Order
5	3	Anthony Alexander	Ditto	Order
5	4	David Archer	Ditto	W. Barton
5	5	G. Georges	Ditto	H. Falmouth
5	6	G. Georges	Ditto	H. Falmouth
5	7	W. Jones	Ditto	Order
5	8	A. Alexander	Ditto	Order
8	9	G. Georges	Ditto	Order

* N.B. Correctly, none of these are Bills of Exchange, but are what are called Town-Notes.

BILL-BOOK.

RECEIVABLE.

To whom Payable.	Date.	Time.	Due.	£	s.	d.	How Disposed of.	Pa. Jour.
Order	Nov. 3	3 months	Feb. 6	200			Gosling & Co.	4
Order	Dec. 7	2 months	9	187	10		Ditto	4
W. Wilson	Jan. 17	1 month	20	500			Ditto	4
Order	Feb. 28	1 month	Mar. 30	1000			Ditto	7
Messrs. Ford	Jan. 10	2 months	13	500			Ditto	7
Messrs. Ford	11	2 months	14	300			Cash	7
G. Williams	1	3 months	April 4	1000				
W. Wilson	Mar. 16	3 months	June 14	1216				
Order	16	60 days	21	773	2	9		
W. Wilson	18	2 months	May 20	1000				
W. Wilson	31	2 months	June 3	1000				

PAYABLE.

Date.	Time.	When Accepted.	When Due.	£	s.	d.	To whom Paid.	Pa. Jour.
Jan. 15	1 month	Jan. 15	Feb. 18	400			Coutts & Co.	4
28	2 months	28	Mar. 30	1000			Barclay & Co.	7
Feb. 4	1 month	Feb. 4	7	500			Barclay & Co.	7
11	1 month	14	13	500			Lloyd & Co.	7
27	2 months	27	April 30	1000				
27	1 month	27	Mar. 30	300			Payne & Co.	7
14	1 month	14	16	600			Payne & Co.	7
14	1 month	14	16	1000			Barclay & Co.	7
Mar. 30	2 months	Mar. 31	June 3	1200				

APPENDIX VII.—DAY-BOOK.

THE Day-book is simply the remnant of the Waste-book, after separating from it such subsidiary books as the merchant deems requisite. It is not necessary to repeat it here, as in Double Entry it is kept precisely like the Waste-book; and an example of a Day-book, according to Single Entry, is given in Appendix XII. Some merchants bring through their Day-book as little as possible, while others bring through it the contents of some of the subsidiary books.

APPENDIX VIII.—INVOICE-BOOK INWARD.

THE Invoice-book Inward is composed of the original Invoices or Bills of Parcels pasted in a large book. In the outer margin of this is ruled a cash column, in which the sums are carried out. It is also paged and indexed, so that any invoice may be easily referred to.—*See the page opposite.*

APPENDIX IX.—INVOICE-BOOK OUTWARD.

THE Invoice-book Outward must be like the Invoice-book Inward in substance; and differs only in that the headings unavoidably come into the latter. The Invoice-book Outward should in all other respects be similar, and is paged and indexed, and the sums carried into the outer column.

For different headings of Invoices also, see the Journal for Sales-book, Appendix X.

London, *February* 4th, 1839.

Mr. TRUEMAN,

Bought of HY. HURLEY,
Thames Street,

1 Cask Roman Vitriol.

	c.	q.	lb.				£	s.	d.
	11	1	9						
Tare		3	9						
	10	2	0						
Draft and Trett		1	21						
	10	1	7	at 44*s.* =	22	2	9		
				Discount		11	3		
					21	11	6		
Paid in Cash, Feb. 14.								21	11	6

London, *February* 4th, 1839.

Mr. TRUEMAN,

Bought of G. GEORGES,

Cochineal, 1 Bag, duty paid,

	c.	qrs.	lbs.	oz.						
A P. No. 8.	1	3	5	1						
Tare			1	1						
	1	3	4	0	200lbs. at 7*s.* 9*d.* =	77	10	0		
									77	10

London, *February* 11th, 1839.

Mr. TRUEMAN,

Bought of HY. HARLEY,
Thames-street.

Powdered White Arsenic, 4 Barrels.

	c.	q.	lb.	lb.						
No. 43.	2	3	10	20						
44.	3	0	10	22						
45.	2	3	7	23						
46.	2	3	18	20						
	11	2	17							
Tare		3	1							
	10	3	16	at 30*s.* =	16	6	9			
				Discount 2½		8	3			
					15	18	6			
Paid in Cash, Feb. 14.									15	18	6

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SALES-BOOK.

Dr SALES OF 21 HHDS. OF SUGAR, PER THE ARGOSY, FROM JAMAICA, **Cr** ON ACCOUNT OF MESSRS. JENKINS AND CO., THERE.

1839.		£	s.	d.
Feb. 7	Insurance, viz.—			
	On Sugar, 200*l.*, at two guineas . 4 4 0			
	Policy Duty, 5*s.* 6*d.* per cent. . . . 16 6			
		5	0	6
Mar. 4	Duty, viz.—			
	257 cwt. at 30*s.* per cwt. . . 385 5 0			
	Fees 1 1 0			
		386	6	
	Freight, at 6*s.* per cwt. . . . 81 0 0			
	Primage, Pierage, and Trade . . . 1 2 6			
		82	2	6
	Lighterage, Wharfage, and Cartage . . .	4	3	6
25	Commission, 2½ per cent.—			
	On Sales 16 1 5			
	On Insurance 2 7			
		16	4	
		493	16	6
	To Messrs. Jenkins & Co.—			
	Net Proceeds	148	13	6
		642	10	

1839.		£	s.	d.
Mar. 25	By W. Jones. Sold him, payable in one Month, Y†Z. 21 Hhds. Sugar.—			
	No. Gross. No. Gross. No. Gross.			
	1—12 3 5 8—14 3 1 15—15 0 27			
	2—14 1 26 9—13 3 20 16—15 1 4			
	3—13 1 0 10—13 2 16 17—14 1 0			
	4—15 3 15 11—12 1 8 18—14 2 17			
	5—14 2 6 12—15 0 3 19—14 2 6			
	6—12 3 7 13—14 1 15 20—13 1 20			
	7—14 3 2 14—15 3 18 21—14 3 7			
	98 2 5 99 3 25 102 0 25			
	98 2 5			
	102 0 25			
	300 2 27			
	Tare 43 2 27			
	Net 257 0 0 at 50*s.* per cwt . .	642	10	
	London, Feb. 27th. 1839. Errors and Outstanding Debts excepted. W. TRUEMAN.			

APPENDIX XI.—WAREHOUSE LEDGER, OR STOCK-BOOK.

	£	s.	d.
	32	14	6
	9	15	
	6	5	
		18	6
	49	13	0

Invoice No. 1.

London, Jan. 1, 1787.
Shipped by
Trustwell & Co.
per the Alfred, Wilson,
on my account.

X Bale, No. 1.

1787.	Sold.	5 Claret Coatings, A, 157 yards, at 4s. 3d.	3 Claret Coatings, B, 78 yards, at 2s. 6d.	2 Blue Coatings, 50 yards, at 2s. 6d.	1 Bale, with Canvass, &c.		£	s.	d.
Mar. 1	James Hill	34				9s. 6d.	16	3	
10	Cash	27	25	25		9s. 6d. 6s. 6s.	27	16	6
15	J. Small	64	26			9s. 6d. 6s.	38	4	
	Cash				8	yds of canvass		2	
Dec. 31	Stock	29	27	25					
		154	78	50	8		82	5	6

This example is from Mr. Booth's Treatise on Accounts, in which he gives it as a Sales-book. I believe it was his own invention. It is commonly used now as a Warehouse Ledger, except that the prices of cost and sale are rarely inserted.

The invoice is continued in the same way through a great many pages.

APPENDIX XII.—DAY-BOOK BY SINGLE ENTRY.

Dr	MERCHANDISE.				£	s.	d.
1839.	*Purchases.*						
Jan. 1	To Stock—						
	Wine		5270	0 0			
	Paper		65	9 0			
	Cloth		500	0 0			
					5835	9	
2	To Cloth in exchange—						
	3 Hhds. of Sherry, at 40*l.*				120		
8	To Cash—						
	58 Reams of Paper, at 22*s.* 6*d.*				65	5	
	To Anthony Alexander—						
	30 Pipes of Port, at 53*l.* 10*s.*		1605	0 0			
	7 Hhds. of Sherry, at 44*s.*		308	0 0			
					1913		
14	To G. Williams—						
	70 Yards of Cloth, at 18*s.*				63		
15	To Cash—						
	130 Reams of Paper, at 15*s.*				97	10	
17	To David Archer, in exchange for Wine—						
	50 Yards of Cloth, at 20*s.*, as per Contra				50		
	To Wine and Cloth, in exchange—						
	200 Reams of Paper, at 13*s.* 4*d.*		133	6 8	133	6	8
	Cash, as per Cash-book		46	12 4			
			180	0 0			
31							
					8277	10	8
	By Profit on Goods Account				492	6	6
					8769	17	2

N. B.—This Day-book contains the transactions of the preceding January; and in fact a general merchandise account, and comprises the Wine, Cloth, and Paper Accounts of the Ledger. Instead of taking the profits in the Day-book, as above, it is more advantageous to carry the totals of this account into the Ledger to a Merchandise account, as practised for February and March.

It is not uncommon to introduce into this Day-book all the Charges Merchandise; this causes confusion, and should be avoided by opening a Profit and Loss Acnt. If that be done, there is no necessity to begin the Day-book with the amount

APPENDIX XII.—DAY-BOOK BY SINGLE ENTRY.

CONTRA. Cr

1839.	*Sales.*	£	s.	
Jan. 2	By Cash 2 Pipes of Port Wine, at 75*l.*	150		
	By exchange for Wine— 100 Yards of Cloth, at 24*s.*	120		
3	By Cash— 7 Yards of Cloth, at 25*s.* 6*d.*	8	18	6
17	By David Archer, in exchange— 5 Pipes of Port, at 70*l.*	1050		
	For 50 Yards of Cloth, at 20*s.*, as per Contra 50 0 0			
	For Cash, as per Cash-book 150 0 0			
	For Residue on Account 850 0 0			
	1050 0 0			
	By Charges— 1 Ream of Paper for Counting-house		17	
28	By Cash— 15 Reams of Paper, at 20*s.* 15 0 0			
	20 Ditto, at 18*s.* 18 0 0	33		
	By Paper and Cash, in exchange— 2 Pipes of Port, at 80*l.* 160 0 0			
	20 Yards of Cloth, at 20*s.* 20 0 0	180		
	By David Archer— 14 Reams of Paper, at 20*s.*	14		
30	By W. Cooper— 15 Yards of Cloth at 26*s.* 8*d.* 20 0 0			
	15 Yards ditto at 27*s.* 8*d.* 20 15 0	40	15	
	By W. Jones— 413 Reams of Paper, at 13*s.* 4*d.*	275	6	8
31	By A. Alexander— 467 Yards of Cloth, at 20*s.*	467		
		2339	17	2
31	By Balance of Goods (viz. wine) on hand, as per valuation	6430		
		8769	17	2

of the goods in hand, for it will appear in the Ledger Account of the merchandise. The system of Single Entry will require a bill-book and cash-book, unless they are fully introduced into the Ledger in the Bill and Cash Accounts. It must also be observed that the loss in the paper (viz. 1*l.* 14*s.*) which comes out in page 13, is not specifically detected by this system of Single Entry; but as losses by damage, &c., are omitted in the valuation of the goods on hand, the loss is allowed for, and there is no error in the Balance or Profit and Loss.

1839.		£	s.	d.	£	s.	d.
Jan. 1	To Balance	326					
4	Joseph Miles, for Rent due at Michaelmas last	227					
5	James Hawkins, on account of Mr. C.'s Annuity				20		
	Partnership Profits for the last Half-Year, to Dec. 1838	1773	11	6			
16	Dividends on Stock	150					
		2476	11	6	20		

Monthly Analysis of the inner columns to be posted in the Ledger.

	£	s.	d.	£	s.	d.
Balance in hand				326	0	0
INCOME.						
Rents	227	0	0			
Dividends	150	0	0			
Partnership	1773	11	6			
				2150	11	6
				2476	11	6
EXPENDITURE.						
Establishment.						
Rent	55	10	0			
Housekeeper	40	0	0			
Tradesmens' Bills	91	3	6			
Livery Stables	137	3	0			
Wages	19	10	0			
Solicitor	156	6	8			
Subscriptions	6	6	0			
Travelling	7	10	0			
Petty Cash	1	15	6			
				515	4	8
Wine				127	13	0
Furniture				31	13	6
Library				4	18	6
				679	9	8

1839.		£	s.	d.	£	s.	d.
Jan. 1	By Loan to S. Johnson . . .				100		
	Housekeeper	30					
3	Mr. Simons, Grocer . . .	34	3	6			
	Mr. Bedford, Wine Merchant .	127	13				
7	Purse . . . [£10 0 0]						
	Mr. Crombie, 2 weeks . .				1		
	Journey to Brighton . .	7	10				
	Plutarch's Lives . . .		16				
	Cocker's Arithmetic . .		2	6			
	Petty Cash		12	6			
14	Mr. Auckland, Furniture . .	26	13	6			
	Messrs. Dobson, Solicitors . .	156	6	8			
17	Purchased £1500 Consols .				1370		
19	Mr. Kett, Hosier . . .	57					
	Purse . . . [£20 0 0]						
	Mr. Crombie, 4 weeks . .				2		
	Subscription to Club . .	6	6				
	Housekeeper . . .	10					
	Petty Cash		10				
	Balance . . [£1 4 0]						
23	Half-Year's Rent, to Christmas .	55	10				
	Loan to W. Peacock . . .				27	10	
	Quarter's Wages to A. B. . .	7					
	Quarter's Wages to X. Y. . .	12	10				
	Purse, £10. . . [£11 4 0]						
	Taylor's Plato . . .	4					
	Furniture	5					
	Petty Cash		13				
	Balance . . . [£1 11 0]						
31	Mr. Jobson, Livery Stables .	137	3				
		679	9	8	1500	10	

APPENDIX XIII.—PRIVATE CASH.

To balance private accounts, the same method must be resorted to as explained in pp. 29 and 67. All the Ledger accounts will be collected into the Balance Sheet and Profit and Loss Sheet, and these will balance the Stock Account. Suppose the following to be the results of the year.

Income or Profit and Loss Account.

Dr	£	s.	d.	Cr	£	s.	d.
1839. Dec. 31.							
Establishment .	2856	15	0	Income from Partnership	3500	0	0
Losses . .	57	10	0	Private Income.			
Allowances for Wear				Rents . . .	356	0	0
and Tear . .	120	0	0	Dividends . .	300	0	0
Surplus to Stock .	1165	15	0	Miscellaneous .	44	0	0
	4200	0	0		4200	0	0

Balance Account.

Dr	£	s.	d.	Cr	£	s.	d.
1839. Dec. 31.							
Capital in Trade .	15,000	0	0	Debts.			
Estate in Surry .	12,000	0	0	A. B. . . .	1000	0	0
Consols £10000 .	9,000	0	0	C. D. . .	1500	0	0
Consols, in name of				E. F. . . .	600	0	0
X. Y. £1100 .	1000	0	0	Balance . .	36,600	0	0
Wines . .	232	0	0				
Furniture . .	1350	0	0				
Library . .	418	0	0				
Credits.							
G. S. . .	500	0	0				
K. L. . .	200	0	0				
	39,700	0	0		39,700	0	0

Stock Account.

1838.	£	s.	d.	1838.	£	s.	d.
Dec. 31. To Balance	36,000	0	0	Jan. 1. By Stock .	35,434	5	0
				Dec. 31. Surplus	1165	15	0
					36,600	0	0
	36,000	0	0	1839.			
				Jan. 1. By Balance	36,600	0	0

CHARGE.

In Chancery.

Between A. B. and others, Plaintiffs, and X. Y. and others, Defendants.

The second Account of the Receiver, P. Q. R., under order, dated 1st of August, 1838.

Tenants' Names.	*Description of Premises.*	*Arrears due Michaelmas, 1837.*	*Annual Rents.*	*Rent Received.*	*Arrears due Michaelmas, 1838.*	*Observations.*
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	
H. H.	Farm of — acres, in the parish of A, in the county of C.	69 0 0	500 0 0	519 0 0	50 0 0	House and Buildings much out of repair.
I. I.	Close and Gardens, at A, aforesaid.		12 0 0	12 0 0		Tenant quitted.
		69 0 0	512 0 0	531 0 0	50 0 0	

DISCHARGE.

Payments and Allowances.

	£	s.	d.
To one year's Land-tax for Close and Garden at A, to Michaelmas, 1838	5	0	
To advertising Garden in "Times"	1	10	0
To amount of Receiver's Costs on passing second account	10	18	4
To amount of Plaintiffs' Costs on passing second account	3	17	6
To amount of Defendants' Costs on passing second account	3	3	2
	£19	14	0

Statement of the foregoing Account.

	£	s.	d.
Amount of Receipts	531	0	0
Receiver's Poundage	26	11	0
Amount of Payments and Allowances	504	9	0
	19	14	0
Balance due from the Receiver	484	15	0

A. B. } I allow this account, being
v. } the same mentioned in my
X. Y. } Report, dated this 26th day
of April, 1838.

N. W. S.

APPENDIX XV.—BANKRUPT'S BALANCE SHEET.

Dr Bankrupt.	£	s.	d.	Contra.	£	s.	d.
Debts (as per List marked D.) .				Debts due (see List C) . .			
Capital				Property (exclusive of debts) taken or to be taken by the Assignees (see List P.) .			
Profits				Losses (List L.) . . .			
				Expenses (List E.) . .			

D.

Debts due by the Bankrupt.

Creditors' Names.	*Residence.*	£	s.	d.

C.

Debts due to the Bankrupt's Estate.

Debtors' Names.	*Residence.*	*Amount.* £ s. d.	*Any Set-off.*	*Good.*	*Bad.*	*Doubtful.*

P.

Property, exclusive of Debts, taken or to be taken by the Assignees.

£	s.	d.

L.

Losses.	£	s.	d.

E.

Expenses.	£	s.	d.
See Montagu on the Law of Bankruptcy.			

APPENDIX XVI.—EXECUTOR'S ACCOUNT.

The Residuary Account for the Stamp Office.

Printed Forms are issued, which may be had gratis on application to the Legacy Duty Office, in Somerset House; and they must be returned to the office filled up in duplicate. By means of a double column, the forms comprise in one account all the schedules in Chancery.

To enable persons to observe the difference, we shall fill up with the items of an estate the following residuary account, the corresponding schedules of which, adapted to an answer in Chancery, will be found in the next Appendix.

REGISTER P. Q. No. 10. 1839. Folio 300.

An Account of the Personal Estate, and of Monies arising out of the Real Estate, of *Abraham Newland, of Piccadilly, in the County of Middlesex, Esquire*, who died on the 20*th* day of *November*, One Thousand Eight Hundred and *Thirty-eight*, exhibited by *Henry Haze, of Lothbury, in the City of London, Merchant*, the Executor of the Deceased, and Trustee of the Real Estate, directed by the Will to be sold, &c., acting under the Will of the Deceased, proved in the *Prerogative* Court of *Canterbury*, on the 15*th* day of *December*, 1838.

DESCRIPTION OF PROPERTY.	Dates of Sales, if Sold.	No. 1. Money received, and Property converted into Money. £	s.	d.	No. 2. Value of Property not converted into Money. £	s.	d.
Cash in the House		57	9				
Cash at the Bankers		847	15	4			
Furniture, Plate, Linen, China, Books, Pictures, Wearing Apparel, Jewels, and Ornaments							
Wine and other Liquors					744	2	
Horses and Carriages, Farming Stock, and Implements of Husbandry							
Stock in Trade							
Good Will, &c. of Trade or Business							
Leasehold Estates	Jan. 1	310					
Life Assurance Policies							
Rents due at the death of the deceased		155	15	10			
Mortgages and Interest due at the death					2100		
Bonds, Bills, Notes, and Interest due at the death		465			150		
Book and other Debts					1080	6	7
Canal and other Shares		120			70		
Ships, or Shares of Ships							
Carried forward		1956		2	4144	8	7

APPENDIX XVI.—EXECUTOR'S ACCOUNT.

	£	Price of Stocks	Dates of Sales, if Sold.	Money received and Property not converted into Money. £	s.	d.	Value of Property not converted into Money. £	s	d.
Brought forward				1956		2	4144	8	7
Exchequer Bills									
Bank Stock	3500	215½					7542	10	
East India Stock									
East India Bonds									
Reduced 3 per Cents.	9000	91⅜					8190		
Consols, 3 per Cent.	1865	91	Jan. 21	1704	2	10			
New 3½ per Cent.	30,500								
	3000	99	Jan. 28	2970					
	27,500	100					27,500		
Reduced 3½ per Cent.									
New 4 per Cent. Annuities									
Bank Long Annuities									
Dividends on the above Stocks due at the Death			Feb. 20	10,000					
The Stocks or Public Securities of Foreign States									
Real Estate, being Partnership Property									
Real Estate, directed to be sold *or Mortgaged*									
Property which the Testator had power to appoint as he thought fit									
Property not comprised within the above descriptions, viz.									
(Insert the total of Column No. 1 in Column No. 2.)							16,630	3	
Total of Property							64,007	1	7
PAYMENTS.									
Probate or Administration				937	19	4			
Funeral Expenses				175	16	3			
Expenses attending Executorship or Administration				204	12	6			
A Schedule of these Deductions *signed by the Executor or Administrator* is to be annexed. Debts on simple Contract, Rent and Taxes, Wages, &c., due at the Death of the Deceased, per Schedule annexed				1495	7	8			
Debts on Mortgage, with Interest (if any) due at the Death									
Debts on Bonds, and other Securities, with ditto									
Pecuniary Legacies per Account annexed				3500					
£10,000 purchased on the 23d of *February*, at 92, *received by the Testator of the Trustees of his wife's settlement, under covenant to be replaced*				9200					
Duty paid on above Legacies				350					
							15,863	15	9
(Deduct the Total of the Payments from the Total of the Property)									
Net Amount of Property carried forward							48,143	5	10

TO SHOW THE BALANCE OF CASH, IF ANY.

Total of Column No. 1	£16,630	3	0
Total of Payments	15,863	15	9
Cash balance	766	7	3

APPENDIX XVI.—EXECUTOR'S ACCOUNT.

	£	s.	d.
Net amount of Property brought forward . .	48143	5	10
ACCUMULATIONS OF INTEREST, DIVIDENDS, RENTS, &c.			
Separate Papers are to be annexed to the Account to show how these Totals are made up.			
Rents of Leasehold Estates Sold to the time of Sale, and of those remaining Unsold, (after deducting Ground Rents, &c.) to the Date of this Account	28		
Rents of Real Estate directed to be Sold to the time of Sale if Sold, if not, to the date of this Account	125		
Dividends on the Stocks and Funds Sold to the time of Sale, and of those remaining Unsold, including the last Dividends . .	27	19	6
Interest on Exchequer Bills Sold or Paid Off, to the Time of Sale or Payment and of those remaining Unsold to the Date of this Account.			
Interest on Bonds, Mortgages, and other Securities Paid Off to the Day of Payment, and of those Outstanding, to the Date of this Account			
Interest at 4 per cent. on £ being the Balance of Cash in Hand, as on the other side, to the Date of this Account .			
Interest on Canal and other Shares to the time of Sale, and of those remaining Unsold, and on other Property yielding an Income not included in any of the above Items, to the date of this Account .			
The Value of the Benefit accruing to the Executor or other Person entitled to the Residue from the Interest of Money or Dividends of Stock retained to answer contingent Legacies, payable at a future day without the intermediate Interest or Dividends . .			
Total . .	48324	5	4

PAYMENTS OUT OF INTEREST, &c.	£	s.	d.		
Interest on Mortgages, Bonds, and other Securities due from the Estate	50				
Interest on Pecuniary Legacies					
Payments on account of Annuities					
Other Payments, if any, viz.					
Deduct the Total Amount of these Payments from the preceding Total				50	
Balance . .				48274	5	4

DEDUCTIONS FROM RESIDUE.	£	s.	d.			
The value of Annuities given by the Will, and now remaining a Charge on the Residue, viz.						
£ to Age Value						
Debts still due from the Estate .	A Schedule or Particulars of these Deductions to be annexed.	1128	13	5		
Retained to pay Outstanding Legacies		1500				
Bad Debts irrecoverable		371	6	7		
Total Deduction . .					3000	
Net Residue . . .					45274	5	4
Deduct any portion of the Residue not liable to Duty, or for which Duty is paid on separate Receipts, viz., *Legacy to Sarah Newland, the Testator's wife*					10000	
Residue on which Duty is chargeable					35274	5	4

DECLARATION.

I do declare that the foregoing is a just and true Account; and I offer to pay to the Commissioners of Stamps the Sum of £352 14*s.* 10*d.* for the Duty, after the Rate of £1 per cent. upon the Sum of £35,274 5*s.* 4*d.*, being *the whole* of the said Residue and Monies which I intend to retain for the use of *Isaac Newland and Jacob Newland.* being *sons of the Deceased.*

Dated this 28th day of *February*, 1839.

HENRY HAZE.

SCHEDULES IN CHANCERY.

THE following schedules contain an account of the estate set forth in the preceding Appendix. The actual form of the schedules is immaterial, so long as they set forth all the particulars required by the bill. The schedules which chiefly relate to the subject of this treatise are as follow:

THE FIRST SCHEDULE

Referred to by the defendant's answer, being an account of the personal estate of the testator, Abraham Newland, and of the real estate directed by the said will to be sold or mortgaged.

PART THE FIRST.

The Personal Estate of the Testator.

	£	s.	d.
Cash in the house	57	9	0
Cash at the Bank of England	847	15	4
Furniture, Plate, Linen, China, Books, Pictures, Wearing-apparel, Jewels, Ornaments, Wine, and other Liquors, Horses, and Carriage: all which are specifically bequeathed to the testator's eldest son, Isaac Newland, and are appraised by Mr. Joseph Miller, appraiser, at*	744	2	0

* It depends entirely upon the nature of the suit, how fully the items are called for and ought to be set forth; *e. g.* if these articles be special objects of the suit, it might be essential to set forth every item, otherwise it would be impertinent to set forth the items.

	£	s.	d.
A leasehold house, No. **, Piccadilly, held of James Hicks, of **, Esq. on a term for twenty-one years, expiring at Michaelmas, 1841, sold for . .	310	0	0

Rents due at the death of the testator.

John Thomas, half-year's rent of freehold house, No. **, in Park-lane, September 29, 1838	100	0	0
George Styles, half-year's rent of freehold house, No. **, in Cheapside, due September 29, 183 . .	55	15	10
	£155	15	10

Mortgages and Interest due at the death of the testator.

Mortgage in fee, dated the 25th day of March, 1827, from A. Masters to the testator, of a freehold messuage and farm, consisting of 200 acres of land, in * *, in the county of * *, for securing the sum of . .	2000	0	0
One year's Interest thereon, due on the 10th October, 1838	100	0	0
	£2100	0	0

Bonds, Bills, Notes, and the Interest due thereon at the death of the testator.

James Simons, on a promissory note, dated May 1, 1836, made payable to the testator on demand .	100	0	0
One year's interest due thereon the 1st November, 1838	5	0	0
William Hearne, on a bond dated June 25, 1837, in the penal sum of 600*l.* for securing to the testator the sum of	300	0	0
Thomas Williams, on a promissory note, dated September 29, 1837, made payable to the testator on demand	200	0	0
One year's interest on the same, due September 29, 1838	10	0	0
	£615	0	0

	£	s.	d.	£	s.	d.
Other debts due to the testator.—Debts believed to be good.						
A B, of &c. . . .	230	0	0			
B C, of &c.	324	0	0			
				554	0	0
Debts doubtful.						
D E, of &c. . . .	120	0	0			
E F, of &c.	35	0	0			
				155	0	0
Debts desperate.						
G H, of &c. . . .	100	0	0			
I K, of &c.	35	6	7			
K L, of &c. . . .	236	0	0			
				371	6	7
				£1080	6	7
Canal, and other shares.						
Two shares, of 50*l.* each, in the * * Company, value .				120	0	0
One share of 100*l.* in the * * Company, estimated at .				70	0	0
				£190	0	0

Stock standing in the name of the testator at the time of his death.

Bank Stock . . .	3500	0	0
Reduced 3 per cents. . .	9000	0	0
Consolidated 3 per cents. .	1865	0	0
New 3½ per cents. . .	30500	0	0
	£44,865	0	0

PART THE SECOND.

The Real Estate of the testator, directed to be sold or mortgaged by the defendant, to raise 10,000*l.* to replace the sum of 10,000*l.* consolidated 3 per cents. advanced to the testator by the trustees of the settlement of Sarah Newland, the testator's wife.

Capital Mansion and Freehold Estate, comprising the entire parish of * *, in the county of * *, in the occupation of J K . . . . . .

Freehold Messuage and Farm, in the occupation of M N, containing * * acres of * *, situate in * *, in the county aforesaid . . . . . .

Five hundred acres of marsh, &c. . . . . .

THE SECOND SCHEDULE

Referred to by the defendant's answer, being an account of the personal and real estate of the testator received by the defendant.

PART THE FIRST.

1838.		£	*s.*	*d.*
Nov. 2.	To Cash in the house	57	9	0
1839.	To Cash in the Bank of England . . .	847	15	4
Jan. 1,	To Sale of the Leasehold Estate in Piccadilly, sold January 1st, 1839 . . .	310	0	0
Jan. 7.	To John Thomas, for rent of house in Park-lane	100	0	0
Jan. 9.	To George Styles, for rent of house in Cheapside	55	15	10
	Carried forward	£1371	0	2

		£	s.	d.	£	s.	d.
Brought forward					1371	0	2
Debts due on Bonds, Bills, and Notes.							
Jan. 9.	To James Simons, on his note in full	100	0	0			
	To James Simons, for interest on the said note . .	5	0	0			
Jan. 10.	To William Hearne, in part payment of his said bond .	150	0	0			
	To Thomas Williams, his note in full	200	0	0			
	To Thomas Williams, for interest on his said note . .	10	0	0			
					465	0	0
Canal, and other shares.							
	To H H, for two Shares, of 50*l.* each, in the * * company				120	0	0
Stock.							
Jan. 20.	To Sold, 1865*l.* Consolidated 3 per cents. at 91⅛				1704	2	10
Jan. 27.	To Sold, 3000*l.* new 3½ per cents. at 99 .				2970	0	0
					£6630	3	0

PART THE SECOND.

Proceeds of the Real Estate of the Testator, directed to be sold or mortgaged.

1839.		£	s.	d.
Feb. 1.	To received of Isaac Newland, the eldest son of the testator, in full for the mortgage directed to be raised out of the said estate devised to him subject thereto . .	10,000	0	0

THE THIRD SCHEDULE

Referred to, being an account of the payments made by this defendant in respect of the estate of the said testator.

		£	s.	d.	£	s.	d.
	Probate.						
1838.							
Dec. 15.	By Probate duty on £61007 1*s.* 7*d.* . .	900	0	0			
	By Proctor's bill . . .	32	14	4			
	By Appraiser . . .	5	5	0			
					937	19	4
1839.	*Funeral Expenses.*						
Jan. 7.	By Undertaker's bill . .	113	2	6			
Jan. 9.	By Green's bill — Servants' mourning . . .	21	0	0			
	By Black's bill—hatbands, &c.	41	13	9			
					175	16	3
	Expenses attending the Executorship.						
Jan. 7.	By Mrs. A.—Housekeeper's account	46	3	7			
Feb. 8.	By Messrs. —— Solicitors' bill	158	8	11			
					204	12	6
	Debts on simple Contract, Rent, Wages, and other accounts due at the Testator's death.						
Feb. 1.	By Ground-rent for the house in Piccadilly . . .	20	0	0			
	By Taxes due . .	60	0	0			
	By Mr. W.—Surgeon . .	120	0	0			
	By &c. &c. . . .						
					1495	7	8
	Carried forward				£2813	15	9

	£ s. d.	£ s. d.
Brought forward		2813 15 2
Pecuniary Legacies.		
By Henry Haze, Executor	500 0 0	
G. W.	500 0 0	
T. B.	300 0 0	
&c. &c.		
		3500 0 0
Feb. 8. By Duty paid on the above Legacies, all at 10*l.* per cent		350 0 0
Feb. 20. By invested in the purchase of 10,000*l.* 3*l.* per cent. consols, and transferred to X.Y., the sole surviving trustee of the settlement of Sarah, the wife of the said Testator		9200 0 0
		15863 15 9
Total receipts . .	16630 3 0	
Total payments . .	15863 15 9	
Cash balance in respect of the principal . .	766 7 3	

THE FOURTH SCHEDULE, &c.

Being an account of the income and profits of the Testator's estate, accrued since his death, and the sums received and paid by this Defendant in respect thereof.

1839.	£ s. d.
Jan. 1. To Rent of Leasehold Estate . . .	28 0 0
Feb. 1. To Interest received of the said Isaac Newland, in respect of the real estate directed	
Carried forward	£ 28 0 0

	£	s.	d.
Brought forward	28	0	0
to be sold or mortgaged from the 20th of November to the 20th of February—three months	125	0	0
To Dividends in the Stock sold . .	27	19	6
	180	19	6
Payments.			
By paid A. X. half-year's interest due at Christmas last, on his bond of 1000*l.*	50	0	0
Balance in hand in respect of the income	130	19	6

This Fourth Schedule is commonly divided into three, the first for the sums accrued, the second for the receipts, and the third for the payments. But it would be more judicious to subjoin the sums accrued as a third part to the First Schedule, the receipts as a third part to the Second Schedule, and the payments as a third part to the Third Schedule, whereby the total cash-balance would appear in one sum. But this not being in exact conformity with the residuary account issued by the Stamp-office, is not so convenient to an executor as an additional schedule. The following form may be adopted so as to comprise in a single schedule every thing required, and it obviates much confusion. A single schedule for personal estate may be divided into the following parts:

Part 1. Personal estate of the Testator realised by the Defendant.
2. Personal estate in specie in the hands of the Defendant.
3. Personal estate outstanding.
4. Income and profits of the personal estate from the death of the testator, and the receipts in respect thereof.

5. Payments and investments in respect of the personal estate.
6. Payments in respect of the income and profits.
7. Cash balances.

Several other schedules or parts may be called for. Among the most common is a schedule of the debts and legacies left by the testator, and of the debts and legacies still outstanding. Another very important schedule is an account, to the defendant's belief, of all the personal estate of the testator received by a co-executor, and for which the defendant usually submits that he is not answerable.

THE END.

WHITING, BEAUFORT HOUSE, STRAND.